TAXPAYERS ASSISTANCE CORPORATION

Journal of Tax Controversy

*Pro Bono = Tax Justice*

# Passed Is Not Law

*What Changed for Your Clients This Year, What Is Still Just a Bill, and What to Do Monday Morning*

**Frank Agostino**[1]

*November 2026 · Authorities current through November 1, 2026*

**HEAR IT LIVE: TAX UPDATE FOR PRACTITIONERS**

Frank Agostino and Walter Primoff, Tax Director at Perelson Weiner LLP, present this material at the NYSSCPA Tax and Financial Planning for Individuals Conference.

Thursday, November 5, 2026, 8:45 to 10:00 AM, FAE Learning Center, 11 East 35th Street, New York. The session carries 1.5 CPE credits in Taxation.

Registration and details: nysscpa.org/catalog/events/1161749

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Most of what changed in tax practice this year came from Congress, the courts, or the IRS itself. Your clients do not care which. They read a headline, hear that a bill "passed," and ask whether the penalty on their notice goes away. The honest answer usually starts with sorting. Is the measure law? Has it cleared Congress and is it waiting for a signature? Or has one chamber acted and the other not? Each answer sends the client down a different road.

This article follows the order of the November 5 session. It first separates law from bills, because clients ask about both. It then takes the courts, the IRS, and the criminal side, which every practitioner hopes never to meet and should recognize. It closes with artificial intelligence, which is now part of the IRS's work and, like it or not, part of yours.

I wrote for two readers: the tax lawyer who litigates collection, penalty, and refund cases, and the CPA, enrolled agent, or preparer who sees the notice first and decides whether to call a lawyer. What helps one usually helps the other, so each part ends with a step to take.

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[1] © 2026 Taxpayers Assistance Corporation. All rights reserved. Frank Agostino is Counsel to Kostelanetz LLP and President of Taxpayers Assistance Corporation; he can be reached at fagostino@kostelanetz.com. Parts II.D, III.G, and VI.F, and the note on authority in the introduction, draw on the slides Walter Primoff prepared for the session and are used with his permission. This article accompanies the November 5, 2026 session of the New York State Society of Certified Public Accountants and the Foundation for Accounting Education, *Tax and Financial Planning for Individuals*, which the author presents with Walter Primoff of Perelson Weiner LLP. Statuses of bills, appeals, and guidance are stated as of November 1, 2026.

Table 1 shows how the session and this article line up.

| Session part | What it covers | Article part | Ask the client first |
|---|---|---|---|
| I. Federal and legislative update | Where authority comes from, enacted law, the Senate-passed Taxpayer Assistance and Service Act, the new individual deductions, the 2026 pronouncements | Parts I and II | Is it law, or only passed? Who on the return has a valid SSN? |
| II. Tax controversy | *Zuch*, section 6751(b), international penalties, *Kwong*, regulations after *Loper Bright* | Part III | Which forum, what posture, what proof? |
| III. IRS administration | Appeals mediation, the Taxpayer Advocate, a leaner Service, the enforcement surge | Parts IV and V | What is already in writing? |
| IV. Artificial intelligence and client data | IRS use, Office of Professional Responsibility AI guidance, *Heppner*, section 7216, the data-confidentiality duties, verification | Part VI | Who typed what into which tool, and under what consent? |
| Questions and checklist | Questions from the room; seven actions to calendar | Parts VII and IX | What gets calendared today? |

Table 1. How the Session Is Organized

A word on dates. Statuses are stated as of November 1, 2026. On that date the President had not signed either of the two bills that have cleared Congress, and the House was in recess until November 9. Three things can change before you read this: those two bills, the House calendar for the Senate-passed taxpayer-rights bill, and the Federal Circuit briefing schedule in *Kwong*.

One more word before the sorting, because Walter Primoff opens the session with it. Every answer in this article traces to statutory, administrative, or judicial authority, and its weight depends on the issue, the forum, and whether it binds the court. Statutory authority is the Code, the treaties, other federal statutes, and the state law that fixes the facts the Code taxes. Administrative authority starts with regulations. Next come two kinds of guidance the IRS publishes in the Internal Revenue Bulletin, which do different jobs rather than rank one above the other: revenue rulings state the IRS's official reading and may be relied on where the facts match; revenue procedures state procedures that affect taxpayers' rights and duties. Below those sit items written for one taxpayer: a private letter ruling, Chief Counsel advice, a technical advice memorandum. None may be cited as precedent, and each shows how the IRS thinks.[2] Judicial authority starts in the trial courts: the Tax Court, the usual forum for contesting a deficiency without paying first; the district courts and the Court of Federal Claims, which hear refund suits; and the bankruptcy courts, which may determine a debtor's tax under 11 U.S.C. § 505. Appeals go to the courts of appeals, then the Supreme Court. After *Loper Bright*, a court need not defer to a regulation's reading of the statute, though it may find the regulation persuasive; where a statute delegates authority to the IRS, a court must respect a regulation that stays within the delegation and reflects reasoned decisionmaking. Outside a delegation, the administrative ranking is a ranking of persuasion, not a shield. Part III.E shows what that has done to the docket.

[2] I.R.C. § 6110(k)(3) (written determinations may not be used or cited as precedent); Treas. Reg. § 601.601(d)(2) (revenue rulings and revenue procedures defined; reliance on revenue rulings); *Golsen v. Comm'r*, 54 T.C. 742 (1970), *aff'd*, 445 F.2d 985 (10th Cir. 1971); *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 395 (2024).

## I. Passed Is Not Law: Sorting the 119th Congress Into Three Buckets

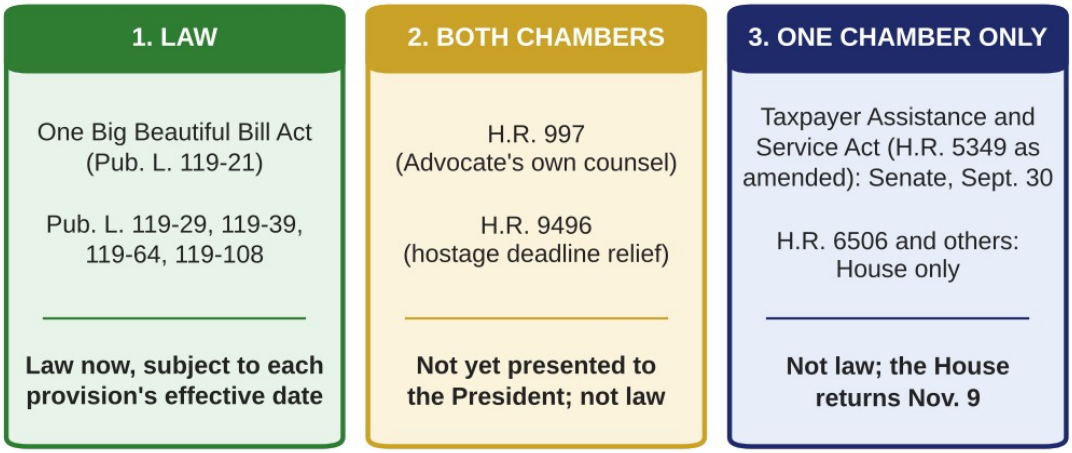



Figure 1. The three buckets. Only the first is law. Statuses as of November 1, 2026.

### A. What Is Law

One statute dominates the year: the One Big Beautiful Bill Act, enacted July 4, 2025.[3] Most of it is substantive tax law. For practitioners, the headlines are the new individual deductions covered in Part II and new reporting duties for payors, which the IRS has been implementing through notices and regulations.

Four narrow taxpayer-rights measures have also become law since July 2025. I list them newest first, because the newest is the one clients have not heard about.

Public Law 119-108, signed September 11, 2026, is the Doug LaMalfa Federal Disaster Tax Relief Certainty Act.[4] An individual may deduct qualified personal casualty losses from a presidentially declared major disaster to the extent they exceed $500 per casualty, net of personal casualty gains for the year. The $500 is a floor, not a cap: only the losses above $500 count. No itemizing is needed, and the 10-percent-of-adjusted-gross-income threshold does not apply. The rule covers taxable years beginning after December 31, 2024, for major disasters whose incident periods begin on or after December 28, 2019 and before January 1, 2027, so a loss from a 2026 disaster stays deductible after that date passes. New section 139M excludes from gross income wildfire relief payments received in taxable years beginning after December 31, 2025, for a forest or range fire declared a federal disaster after December 31, 2014 and before January 1, 2027, to the extent insurance or other compensation does not cover the loss. An excluded payment supports no deduction, credit, or basis increase.

Public Law 119-64, signed December 26, 2025, is the Disaster Related Extension of Deadlines Act.[5] It adds section 7508A(f). When section 7508A disregards a period for filing a return, that period now counts as an extension of time to file the return for the refund lookback in section 6511(b)(2)(A), the limit on how far back a refund can reach. The Act also amends section 6303(b) so that the timing of the first notice and demand accounts for disaster

[3] Pub. L. No. 119-21, 139 Stat. 72 (2025).

[4] Doug LaMalfa Federal Disaster Tax Relief Certainty Act, Pub. L. No. 119-108, 140 Stat. 1019 (Sept. 11, 2026) (amending I.R.C. §§ 63(b), 165(h); adding § 139M).

[5] Disaster Related Extension of Deadlines Act, Pub. L. No. 119-64, 139 Stat. 1984 (Dec. 26, 2025) (adding I.R.C. § 7508A(f); amending I.R.C. § 6303(b)); *see* I.R.C. § 6511(b)(2)(A).

postponements. The section 7508A(f) change applies to claims filed after enactment, and the section 6303(b) change to notices issued after enactment. Part III.D explains why that matters to *Kwong* claimants.

Public Law 119-39, signed November 25, 2025, is the IRS Math and Taxpayer Help Act.[6] It requires math-error notices under section 6213(b)(1) to identify, in plain language, the specific return line at issue. Enacted does not mean it applies to the notice on your desk. The main notice requirements apply to notices sent twelve months after enactment, that is, after November 25, 2026. Check the effective date before you argue that a notice is defective.

Public Law 119-29, signed July 24, 2025, is the Filing Relief for Natural Disasters Act.[7] The Secretary, after consulting the Federal Emergency Management Agency (FEMA), may now apply section 7508A to a state-declared disaster at the Governor's written request, and the mandatory postponement grows from sixty to one hundred twenty days. Both changes apply to declarations made after July 24, 2025. The Act also renumbered the 2019 mandatory-postponement rule that *Kwong* construes: former subsection (d) is now section 7508A(e).

### B. What Has Cleared Congress but Is Not Yet Law

Two measures have passed both chambers. As of November 1 neither had been presented to the President, and neither has a public law number. The National Archives list of public laws ran through Public Law 119-136, signed October 22, and included neither.

H.R. 997, the NTA Enhancement Act, would let the National Taxpayer Advocate appoint her own counsel under section 7803(c)(2)(D).[8] It passed the House 385 to 0. The Senate passed it on September 28, 2026, according to the GovInfo bill-status feed. H.R. 9496, the End Tax Penalties on American Hostages Act, would add section 7511 to postpone tax deadlines, and the penalties that follow them, for Americans held hostage or wrongfully detained abroad.[9]

A bill that has cleared Congress becomes law, once presented to the President, in one of three ways: the President signs it; ten days (Sundays excepted) pass without a veto and without an adjournment that prevents its return; or Congress overrides a veto by a two-thirds vote of each chamber. Check the status again the morning of the session.

### C. The Taxpayer Assistance and Service Act: Passed the Senate, Not Law

The tax-administration bill to watch is the Taxpayer Assistance and Service Act. Senators Crapo and Wyden of the Senate Finance Committee introduced it as S. 3931 on February 26, 2026. The committee approved a modified text 26 to 1 on July 30, 2026, and reported it on September 17 as an original bill, S. 5441, with Senate Report 119-145. It contains sixty-five provisions, many drawn from the National Taxpayer Advocate's annual recommendations.[10] On September 30, 2026, the Senate passed it by unanimous consent, by striking the text of H.R.

[6] IRS Math and Taxpayer Help Act, Pub. L. No. 119-39, 139 Stat. 659 (Nov. 25, 2025); I.R.C. § 6213(b)(1).

[7] Filing Relief for Natural Disasters Act, Pub. L. No. 119-29, 139 Stat. 471 (July 24, 2025).

[8] H.R. 997, 119th Cong. (2026) (enrolled); I.R.C. § 7803(c)(2)(D).

[9] H.R. 9496, 119th Cong. (2026) (adding I.R.C. § 7511).

[10] Taxpayer Assistance and Service Act, S. 5441, 119th Cong. (original bill reported Sept. 17, 2026, S. Rept. No. 119-145); S. 3931, 119th Cong. (introduced Feb. 26, 2026); H.R. 5349, 119th Cong. (as amended by the Senate Sept. 30, 2026). Bill histories are from the GovInfo bill-status records for S. 5441, S. 3931, and H.R. 5349. Section numbers and descriptions in this Part follow the text of the Senate amendment to H.R. 5349. On equitable tolling, *see Boechler, P.C. v. Comm'r*, 596 U.S. 199 (2022).

5349, a House-passed Tax Court bill, and substituting the Act. The House now holds an amended H.R. 5349. It has not concurred, and the House Majority Leader's calendar shows the House returning November 9, 2026, four days after the session.

I use the word "would" in this section on purpose. Everything below describes the Senate-passed text, as summarized by the Senate Finance Committee, and none of it is current law.

Section 112 would require written approval of a penalty, on an electronic form, by the immediate supervisor or the IRS Office of Servicewide Penalties, by the date the IRS sends the first notice that can be taken to Appeals or to court. The same rule would apply to the disallowance periods for the child tax credit, the American Opportunity credit, and the earned income credit, and the IRS would owe Congress an annual penalty report. Today, section 6751(b)(1) says that no penalty shall be assessed unless the initial determination of the assessment is personally approved in writing by the immediate supervisor of the individual making it or a higher-level official the Secretary designates.[11] The bill would settle when that approval must happen.

Section 204 would make Title 26 penalties assessable, meaning the IRS could assess and collect them without suing, except a penalty outside the assessable-penalty subchapter that the law collects by civil or criminal action or that the IRS has consistently treated that way. Going forward, that would override the Tax Court's *Farhy* and *Mukhi* line (Part III.C). For the listed international information-return penalties (sections 6038(b)(1), 6038A(d)(1), 6038B(c), 6038C(c), 6038D(d)(1), 6039F(c)(1)(B), and 6677), the bill would first require 60 days' notice before assessment (120 days abroad) and a right to Appeals review, except in jeopardy cases. The continuation penalties under sections 6038(b)(2), 6038A(d)(2), and 6038D(d)(2), which accrue when a failure continues more than 90 days after notice, would not be covered. One caution is easy to miss: assessability changes nothing about collection rights. Collection due process under section 6330 still stands between assessment and levy, except for the few levies section 6330(f) lets come first.

Sections 301 through 312 are the Tax Court package. They would end the limit that confines the Tax Court's de novo (fresh) review of innocent-spouse determinations to the administrative record and newly discovered evidence; confirm that the relief is available in refund, collection, and bankruptcy cases; give the court refund-suit jurisdiction up to $2,000,000 for any one taxable year or period (section 310); let it order refunds in collection due process cases (section 309); and raise the small-case limit from $50,000 to $100,000, indexed (section 312). Section 307 would make the deadlines for deficiency, innocent-spouse, and collection due process petitions nonjurisdictional and subject to equitable tolling, so a court could accept a late petition when fairness requires, the fix practitioners have wanted since *Boechler*. Part of it is here already: *Boechler* allows tolling of the collection due process deadline, and the Second Circuit in *Buller* and the Third Circuit in *Culp* allow it for deficiency petitions. Section 307 would put the rule in the statute for every circuit.[12] Sections 401 through 403 would give the Taxpayer Advocate independent counsel, personnel, and information access. Section 502 would make it a felony to willfully furnish an invalid preparer tax identification number

[11] I.R.C. § 6751(b)(1); S. 5441, 119th Cong. § 112 (2026).

[12] *Boechler, P.C. v. Comm'r*, 596 U.S. 199 (2022); *Buller v. Comm'r*, No. 24-1557 (2d Cir. Aug. 14, 2025), *amended* (2d Cir. Nov. 26, 2025); *Culp v. Comm'r*, 75 F.4th 196 (3d Cir. 2023).

with intent to evade the requirement to obtain one, and section 504 would let the IRS deny, revoke, or suspend those numbers. Sections 603 and 604 would add appeal rights for refund disallowances and returned offers in compromise, and section 605 would require Appeals to evaluate and consider all hazards of litigation, "without exception."

**PRACTICE POINTER**

Brief your partners and staff on sections 112, 204, and 301 through 312 now, because some changes would apply at enactment if the House acts: the de novo innocent-spouse review, equitable tolling, and the higher small-case limit in sections 306, 307, and 312. Others are delayed. The penalty-approval rule in section 112 reaches notices sent more than 12 months after enactment, and the refund-suit provisions in sections 310 and 311 apply after the same 12-month delay. Do not tell a client that any of them is current law.

Figure 2 and Table 2 show when each change would apply if the bill became law. Most dates run from enactment, which has not happened; the special-trial-judge consent provisions of section 303 would instead take effect when the Tax Court adopts implementing rules.

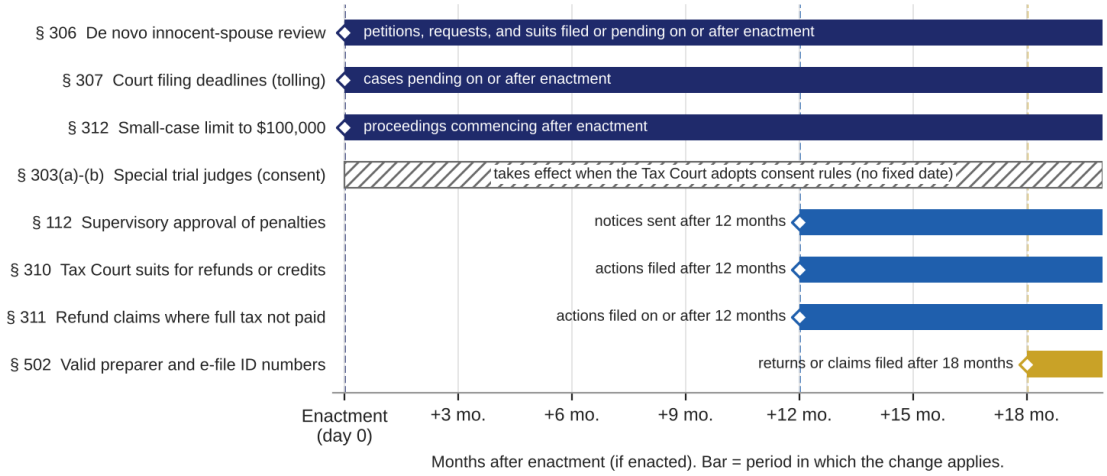



Figure 2. If the Taxpayer Assistance and Service Act became law: when each change would apply. Source: H.R. 5349, 119th Cong., Senate amendment (Sept. 30, 2026), §§ 112(c), 303(d), 306(c), 307(c), 310(d), 311(b), 312(d), 502(e).

| Section | Subject (section heading) | Effective-date clause (exact text) |
|---|---|---|
| § 112(c) | Modification of procedural requirements for penalties and disallowance periods | "The amendments made by this section shall apply to notices sent after the date which is 12 months after the date of the enactment of this Act." |
| § 303(d) | Authorization of special trial judges to hear additional cases and address contempt | "The amendments made by subsections (a) and (b) shall take effect on the date the United States Tax Court adopts rules implementing the consent procedures of section 7443A." |
| § 306(c) | Authorization of de novo review of innocent spouse relief by the Tax Court and other courts | "The amendments made by this section shall apply to petitions, requests, and suits filed or pending on or after the date of the enactment of this Act." |
| § 307(c) | Clarification of certain court filing deadlines | "The amendments made by this section shall apply to cases pending on or after the date of the enactment of this Act." |

| Section | Subject (section heading) | Effective-date clause (exact text) |
|---|---|---|
| § 310(d) | Authorization of the Tax Court to hear suits for refunds or credits | "The amendments made by this section shall apply to actions filed after the date that is 12 months after the date of the enactment of this Act." |
| § 311(b) | Authorization to allow claims for refund in certain cases where full tax not paid | "The amendments made by this section shall apply to actions filed on or after the date that is 12 months after the date of the enactment of this Act." |
| § 312(d) | Adjustment of threshold for small disputes | "The amendments made by this section shall apply to proceedings commencing after the date of the enactment of this Act." |
| § 502(e) | Ensuring the use of valid preparer identification numbers and electronic filing identification numbers | "The amendments made by this section shall apply to returns or claims for refund filed after the date which is 18 months after the date of enactment of this Act." |

Table 2. Effective-Date Clauses of the Senate-Passed Bill, Quoted (None Is Law)

### D. What Sits in the Senate

Several measures have passed the House and wait in Senate Finance. They show where Congress is likely to move, and several overlap the Senate-passed bill.

The Fair and Accountable IRS Reviews Act, H.R. 5346, would rewrite section 6751(b).[13] It would bar assessment of a penalty unless the examiner's immediate supervisor (the person to whom the examiner reports) or a higher-level official the Secretary designates personally approves the initial determination in writing before any written communication about the penalty, including a proposed adjustment, goes to the taxpayer. It passed the House on December 1, 2025, after Ways and Means approved it 44 to 0, and was referred to Senate Finance the next day. Section 112 of the Senate-passed bill would reach a similar result with a different trigger: approval by the time the first appealable notice is sent. The idea has two live vehicles.

H.R. 6506, the Taxpayer Due Process Enhancement Act, answers *Zuch* (Part III.A).[14] It passed the House on May 19, 2026, and sits in Senate Finance. Three more Ways and Means bills from this summer belong on the list.[15] H.R. 9500, the Tax Relief for Fraud Victims Act, would repeal the disaster-declaration limit on personal casualty and theft losses and add special timing and refund rules for theft losses involving fraud, deceit, or misrepresentation; it passed the House on September 15, 2026, 408 to 17. H.R. 9498, the Taxpayer Advocate Participation Act, would let the Advocate file friend-of-the-court briefs in tax cases against the IRS; it passed the same day. H.R. 9501, the AI Tax Integrity Act of 2026, would require a pilot program using artificial intelligence to flag incorrect returns, and a report to Congress; the committee reported it on September 8, 2026, and the House has not voted. H.R. 9500 and H.R. 9498 went to Senate Finance on September 16, 2026. H.R. 1152 would extend the mailbox rule to electronic filings and payments. H.R. 1155, the Recovery of Stolen Checks Act, would let a taxpayer whose refund check was stolen take the replacement electronically; it passed the House by voice vote on March 31, 2025, and sits in Senate Finance. H.R. 6495, which would expand notice when the IRS contacts third parties, passed the House on April 27, 2026 and went to Senate Finance the

[13] H.R. 5346, 119th Cong. (2025); H. Rept. 119-318; I.R.C. § 6751(b)(1); S. 5441, 119th Cong. § 112 (2026).

[14] H.R. 6506, 119th Cong. (2026) (as passed by the House); H. Rept. 119-428; H.R. 5349, 119th Cong. §§ 308–309 (as amended by the Senate Sept. 30, 2026).

[15] H.R. 9500, H.R. 9498, and H.R. 9501, 119th Cong., ordered reported July 1, 2026; H. Rept. 119-801 (H.R. 9501); House passage of H.R. 9500 and H.R. 9498 on Sept. 15, 2026; GovInfo bill-status records; Ways and Means Committee release (Sept. 16, 2026).

next day. The original H.R. 5349 passed the House on December 1, 2025, after Ways and Means approved it 40 to 0. It carried four Tax Court reforms: pre-hearing subpoena power to help settlements, more authority for special trial judges, Title 28 standards for disqualifying judges, and a clarification that equitable tolling applies to the ninety- and one-hundred-fifty-day petition periods. Those provisions now sit in the Judicial Review title of the Senate-passed bill.

Table 3 collects the status of each measure.

| Status | Measure | What it does |
|---|---|---|
| Law | Pub. L. 119-21 (OBBBA) | New individual deductions; payor reporting duties |
| Law | Pub. L. 119-108 | Casualty-loss deduction above $500 per casualty; wildfire relief exclusion |
| Law | Pub. L. 119-64 | New § 7508A(f); § 6303(b) timing fix |
| Law | Pub. L. 119-39 | Plain-language math-error notices; main rules apply to notices sent after Nov. 25, 2026 |
| Law | Pub. L. 119-29 | State-declared disasters qualify; postponement grows to 120 days |
| Passed both chambers; not yet presented | H.R. 997 | Advocate may appoint her own counsel |
| Passed both chambers; not yet presented | H.R. 9496 | New § 7511 for hostages and wrongfully detained Americans |
| Passed the Senate | Taxpayer Assistance and Service Act (as H.R. 5349) | Penalty approval, assessability, Tax Court, Advocate, Appeals, preparers |
| Passed the House; in the Senate | H.R. 5346; H.R. 6506; H.R. 6495; H.R. 9500; H.R. 9498; H.R. 1152; H.R. 1155 | § 6751(b) rewrite; post-*Zuch* fix; third-party contact notice; fraud-victim losses; Advocate amicus briefs; mailbox rule; stolen checks |
| Reported from committee; no floor vote | H.R. 9501 | AI pilot for incorrect returns |

Table 3. The 119th Congress Scoreboard (as of November 1, 2026)

## II. The New Individual Deductions: What the Guidance Says and What the Inspector General Found

### A. The Guidance Map

The new deductions are in the statute. How to claim them is in the guidance, which has been arriving in layers.

For tax year 2025, the proof rules come from IRS notices, and they are forgiving. Notice 2025-69, issued November 21, 2025, lets an individual prove qualified tips and qualified overtime with pay stubs, Forms 4070 and 4137, and point-of-sale records, without separate employer accounting.[16] The tips deduction under section 224 is capped at $25,000. The overtime deduction under section 225 reaches only the premium that the Fair Labor Standards Act requires, the half in time-and-a-half, with limits of $12,500 and $25,000. Where a pay statement shows only the total paid at time-and-a-half for overtime hours, the notice lets the employee use one-third of that total as the premium; a statement that already shows the premium separately is used as is. Notice 2025-62, issued November 5, 2025, relieved payors from the section 6721 and 6722 penalties for 2025 for not separately reporting tips and overtime.

[16] I.R.S. Notice 2025-69, 2025-50 I.R.B. 766; I.R.S. Notice 2025-62, 2025-48 I.R.B. 740; I.R.C. §§ 224, 225, 6721, 6722.

For 2026 the rules firm up. The final tips regulations, T.D. 10044, were published April 13, 2026, and took effect June 12, 2026.[17] They cover 71 occupations, up from 68 in the September 2025 proposal. The final car-loan interest regulations under section 163(h)(4), T.D. 10054, were published September 8, 2026, and take effect November 9, 2026. The effective date is not the applicability date: both sets of final regulations apply to taxable years beginning after December 31, 2024, so they reach 2025 returns too. Lenders that receive $600 or more of qualifying interest must file Form 1098-VLI beginning with interest received in 2026, and Treasury declined to extend the 2025 transition relief of Notice 2025-57. The senior deduction runs through Schedule 1-A and its instructions, not through regulations.

### B. The Social Security Number Gate

Each of the three deductions requires a Social Security number (SSN): section 224(e) for tips, section 225(d) for overtime, and section 151(d)(5)(C)(iv) for the senior deduction.[18] An individual taxpayer identification number (ITIN) is not an SSN, so a claimant who has only an ITIN cannot take these deductions. Tell the client early, and in writing, or the client will assume the deduction applies and be surprised at filing.

Joint returns are harder. Sections 224(e) and 225(d) require the return to include "such individual's social security number," and sections 224(e)(2) and 225(d)(2) borrow the work-authorized definition in section 24(h)(7). The IRS reads the requirement as attaching to the spouse who earned the income. The 2025 Schedule 1-A says that "you and/or your spouse who received qualified tips must have a valid social security number," and it uses the same words for overtime. The draft 2026 schedule keeps both cautions unchanged.[19] A married couple filing jointly, one spouse with a valid SSN and one with an ITIN, can claim the deduction for the tips or overtime of the spouse with the SSN, but not for the other spouse's.

**Part II** **No Tax on Tips**

**Caution:** Fill out Part II only if you received qualified tips. These tips must have been received in an occupation listed at *IRS.gov/TippedOccupations*. You and/or your spouse who received qualified tips must have a valid social security number to claim the deduction. If married, you must file jointly to claim this deduction. See instructions.

Figure 3. The SSN caution on the 2025 Schedule 1-A, Part II (No Tax on Tips). Source: IRS, 2025 Schedule 1-A (Form 1040). Part III uses the same words for overtime.

Table 4 works through the four combinations a joint return can present.

| Married filing jointly | Tips or overtime deduction for the earner's tips or overtime (Parts II-III) | Enhanced deduction for seniors (Part V, lines 36a-36b) |
|---|---|---|
| Both spouses have valid SSNs | **Yes** | **Yes, for each spouse** born before Jan. 2, 1961 (line 36a for you, line 36b for your spouse) |
| Earner has valid SSN; other spouse has ITIN | **Yes**, for the earner's tips or overtime | **Only the SSN spouse**, if born before Jan. 2, 1961; nothing for the ITIN spouse |

[17] T.D. 10044, 91 Fed. Reg. 19026 (Apr. 13, 2026) (applicable to taxable years beginning after Dec. 31, 2024, Treas. Reg. § 1.224-1); T.D. 10054 (Sept. 8, 2026) (same, Treas. Reg. § 1.163-16(i)); I.R.C. § 163(h)(4); I.R.S. Notice 2025-57; I.R.S. News Release IR-2026-28; I.R.S. Fact Sheet FS-2026-13. The inspector general's report cites the final tips regulations at a different Federal Register page, and I rely on the citation that matches the Federal Register itself.

[18] I.R.C. §§ 224(e), 225(d), 151(d)(5)(C)(iv); I.R.S. Notice 2025-69, 2025-50 I.R.B. 766.

[19] 2025 Schedule 1-A (Form 1040), Parts II and III (cautions); Draft 2026 Schedule 1-A (Form 1040), Parts II and III (posted Sept. 4, 2026); I.R.C. §§ 224(e), 225(d), 24(h)(7).

| Married filing jointly | Tips or overtime deduction for the earner's tips or overtime (Parts II-III) | Enhanced deduction for seniors (Part V, lines 36a-36b) |
|---|---|---|
| Earner has ITIN; other spouse has valid SSN | **No**, for the earner's tips or overtime (the SSN spouse's own tips or overtime, if any, still qualify) | **Only the SSN spouse**, if born before Jan. 2, 1961; nothing for the ITIN spouse |
| Neither spouse has a valid SSN | **No** | **No** |

Table 4. The SSN Rule on a Joint Return (2025 Schedule 1-A; income limits and the other conditions still apply)

The inspector general's report also lists married filing separately as ineligible for the tips, overtime, and senior deductions, a second reason to confirm filing status early.

### C. The Inspector General's October 15 Audit

The first outside audit of the new deductions, by the Treasury Inspector General for Tax Administration (TIGTA), is dated October 15, 2026. TIGTA calls the statute the Working Families Tax Cuts Act; it is the same law, Public Law 119-21.[20] The report leads with good news: in general, TIGTA found, the IRS successfully implemented all four provisions in a compressed time. TIGTA notes that a lapse in appropriations from October 1 to November 12, 2025, affected staffing and resources while the IRS prepared for the 2026 filing season.

The gaps are in the overtime guidance and in what happens after the IRS accepts a return.

*Overtime.* The deduction reaches only overtime the Fair Labor Standards Act requires, so an employee exempt from that Act's overtime rules does not qualify. In November 2025 TIGTA told Chief Counsel that the draft guidance said nothing about exempt categories. The IRS issued Notice 2025-69 without them, issued FAQs on January 23, 2026, three days before filing season opened, and added examples of exempt categories to the FAQs in August 2026. TIGTA treats that as meeting its recommendation. For an overtime client, ask whether the employee is covered and not exempt, not just how much overtime the pay stub shows.

*Car-loan interest.* The statute requires the vehicle identification number (VIN) on the return. TIGTA analyzed e-filed 2025 returns through April 15, 2026. Of 1,448,258 accepted returns claiming the deduction, it flagged 473,361 for VIN concerns, claiming about $976.8 million in deductions. It estimated the tax effect at about $122.4 million, using a 12.53 percent effective rate.[21] Figure 4 shows the three groups the report sorts the flagged returns into. Much of the testing detail is redacted, and the unredacted text does not say what defines each group, so I do not describe them. The IRS disputes the $122.4 million estimate because, it says, the estimate treats every flagged deduction as improper; TIGTA says that is not what it concluded. The report does not say how many flagged returns are actually improper, though one passage calls the 407,637 group "erroneous" and another associates those returns with potentially ineligible vehicles.

[20] Treasury Inspector Gen. for Tax Admin., Rep. No. 2027-300-001, *Implementation of Select Provisions of the Working Families Tax Cuts Act* (Oct. 15, 2026); Pub. L. No. 119-21, §§ 70103, 70201–70203, 139 Stat. 72 (2025); I.R.C. §§ 151(d)(5)(C), 163(h)(4), 224, 225.

[21] Rep. No. 2027-300-001, *supra* note 19. The report's figures are 1,448,258 accepted returns claiming the car-loan interest deduction; 473,361 flagged returns in three groups of 20,135, 45,589, and 407,637; $976,834,814 in flagged deductions; and a $122,397,402 estimated tax effect computed with a 12.53 percent effective rate. The Service disagreed with the outcome measure. The report's description of each group is redacted.

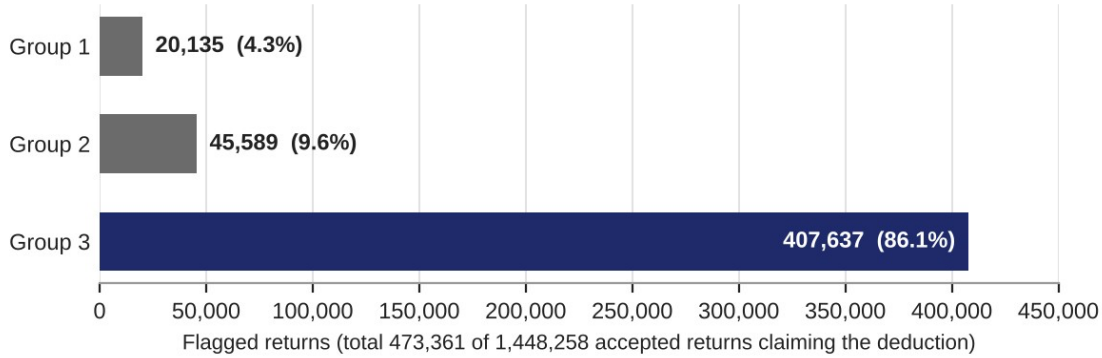



Figure 4. Accepted 2025 returns claiming the car-loan interest deduction that TIGTA flagged for vehicle-identification-number concerns, by group. Source: TIGTA, Rep. No. 2027-300-001 (Oct. 15, 2026). The report redacts the description of each group.

*Why the IRS accepted the returns.* IRS officials told TIGTA that a court might later treat a rejected return as a valid one that started the three-year assessment period. Validity turns on the *Beard* test. In *Fowler*, the IRS had rejected a timely e-filed 2013 return for a missing identity-protection personal identification number (PIN); because that year's instructions did not make the PIN part of the signature, the court held that the return was valid and started the three-year period.[22] Officials also said the math-error statute, section 6213(g)(2)(D), does not reach the problem, unlike the clean-vehicle credit, where Congress gave the IRS math-error authority over vehicle numbers. The IRS's 28 business rules for these deductions check form, income thresholds, and basic attributes, not whether a claim is substantively eligible.

*What happens next.* As of August 2026 the IRS had no plan to review claims for any of the four deductions after it processed the returns. TIGTA made four recommendations. It treated the first, on overtime guidance, as met in August 2026. The IRS disagreed with the second and third. It agreed with the fourth, which calls for a post-processing review plan, and set December 21, 2026 as the implementation date.[23] TIGTA contemplates correspondence or field examinations of the claims.

**PRACTICE POINTER**

A client who took the tips, overtime, senior, or car-loan interest deduction should gather pay records, tip records, lender statements, and vehicle documents now, before any letter arrives. The IRS has told its auditor that it will build a post-processing review. A client who can answer in an afternoon may not need a lawyer in the spring.

### D. Fourteen Recent Pronouncements That Change a Procedure You Use

Walter Primoff's part of the session collects the year's smaller pronouncements, the ones that do not make the trade press twice but change a step in your office. Table 5 lists each with the identifier you need to find it.[24] Four deserve a sentence.

[22] *Beard v. Comm'r*, 82 T.C. 766 (1984), *aff'd*, 793 F.2d 139 (6th Cir. 1986); *Fowler v. Comm'r*, 155 T.C. No. 7 (2020) (holding that a timely e-filed return rejected for a missing identity-protection PIN was a valid return that started the assessment period); I.R.C. § 6213(g)(2)(D); *see id.* § 6213(g)(2)(T)–(V) (math-error authority for the clean-vehicle credits).

[23] Rep. No. 2027-300-001, *supra* note 19. The Service agreed with Recommendation 4, the post-processing plan, with an implementation date of December 21, 2026, and disagreed with Recommendations 2 and 3.

[24] Notice 2026-3, 2026-2 I.R.B. 307; Notice 2026-63, 2026-44 I.R.B. 599; Rev. Proc. 2026-25, 2026-29 I.R.B. 45; Rev. Proc. 2026-33 (Oct. 22, 2026) (advance release; not yet published in the Bulletin); *see id.* § 3.03 (no-fee waiver under

The Automatic Exemption from Penalty, announced July 8, 2026, is relief the IRS applies on its own, during original return processing, against failure-to-file, failure-to-pay, and failure-to-deposit penalties for a taxpayer with three clean years (12 quarters for quarterly filers). It phases in during 2026, when First Time Abate can still be requested, and replaces First Time Abate, which a taxpayer had to request, for eligible returns with original due dates on or after January 1, 2027. Read the transcript before you write the abatement letter, because the relief may already be posted.

The final regulations under Treas. Reg. § 1.6011-15, published July 9, 2026, make a known arrangement a listed transaction. Appreciated property goes into a charitable remainder annuity trust; the trustee sells it and buys an annuity with the proceeds; and the beneficiary reports the payout under section 72 instead of under the trust's ordering rule, which taxes ordinary income first, then capital gain, then other income, then corpus (principal). A listed transaction must be disclosed on Form 8886, with a penalty for not filing it. The charity named to receive what is left in the trust (the remainderman) is not treated as a participant solely because of that status.

Rev. Proc. 2026-33, announced October 22, 2026 and effective May 1, 2027, creates a correction program for individual retirement accounts (IRAs) covering four narrow kinds of failure (required minimum distributions, IRA establishment, nonspouse-beneficiary distributions and rollovers, and 60-day rollovers), most of which require an error by the custodian or another service provider. An owner or custodian applies, pays a fee on Pay.gov ($3,500 for a regular submission filed before January 1, 2028), and the IRS decides; the program offers no self-correction. The release adds that the existing automatic-waiver and self-certification procedures under Revenue Procedures 2020-46, 2016-47, and 2003-16 remain available at no cost, so check those first. For a missed required distribution, the excise-tax waiver under Treas. Reg. § 54.4974-1(g), requested on Form 5329, also costs nothing.

Notice 2026-63 uses the same section 7508A that *Kwong* construes. Acts due on or after September 30, 2026 and before September 30, 2027, for persons affected by the terroristic action in Israel, are postponed to September 30, 2027. The notice, not the headline, defines who qualifies and which deadlines move.

| Item | Identifier | What changed |
|---|---|---|
| Tax Pro Account for firms | IR-2026-22 (Feb. 9, 2026) | A firm's Centralized Authorization File (CAF) number can be tied to its employer identification number (EIN); authorized practitioners see firmwide clients |
| Reporting tax fraud | IR-2026-26 (Feb. 26, 2026) | One consolidated page, IRS.gov/SubmitATip |
| Final tips regulations | T.D. 10044 (Apr. 13, 2026); IR-2026-49 | 71 tipped occupations; Treasury declined to add accountants |
| Tax Debt Help tool | IR-2026-53 (Apr. 16, 2026) | Self-service path to payment plans and offers |
| Security Summit | IR-2026-75 (June 8, 2026) | Partnership restructured into five work groups; payroll partners added |

Treas. Reg. § 54.4974-1(g) and rollover self-certification remain available). The other identifiers in Table 5 are to irs.gov, federalregister.gov, and govinfo.gov. The car-loan interest cap statement is from the preamble to T.D. 10054, 91 Fed. Reg. 57214 (Sept. 8, 2026), which says the per-return rule proposed in REG-113515-25, 91 Fed. Reg. 67 (Jan. 2, 2026), was not revised.

| Item | Identifier | What changed |
|---|---|---|
| Trump account contributions | Rev. Proc. 2026-25 (June 29, 2026) (gift safe harbor); T.D. 10056 (account rules) | Safe harbor: qualifying cash contributions are present-interest gifts; no Form 709 if conditions met |
| Automatic Exemption from Penalty | IR-2026-83 (July 8, 2026); Pub. 6171 | Automatic failure-to-file, -pay, and -deposit relief; replaces First Time Abate for eligible returns with original due dates on or after Jan. 1, 2027 |
| CRAT listed transaction | T.D. 10051; Treas. Reg. § 1.6011-15 (July 9, 2026) | CRAT-plus-annuity arrangement is a listed transaction |
| Tax Compliance Report | IR-2026-97 (Aug. 20, 2026) | Digitally authenticated report from Individual Online Account for lenders, employers, agencies |
| Car-loan interest regulations | T.D. 10054 (Sept. 8, 2026); Treas. Reg. § 1.163-16 | One $10,000 cap per return; a joint return gets one, each separate return its own |
| IRA correction program | Rev. Proc. 2026-33; IR-2026-126 (Oct. 22, 2026) | Four narrow failure types, most needing a custodian error; fee; effective May 1, 2027; no self-correction under the program |
| Israel postponement | Notice 2026-63 | § 7508A relief; deadlines to Sept. 30, 2027 |
| Tribal general welfare benefits | T.D. 10040 (Dec. 16, 2025); I.R.C. § 139E | Final exclusion rules; mandatory for years beginning after 2026 |
| Farmland installment election | Notice 2026-3 (Dec. 22, 2025); I.R.C. § 1062 | Estimated-tax penalty relief for the installment election on qualifying farmland sales |

Table 5. Recent Pronouncements for the Individual Practice

## III. The Courts: Forum, Posture, and Proof

I teach these cases in the order a client meets them, and I ask three questions of each. Which court or agency has the case (the forum)? What stage is it in, and how did it get there (the posture)? What proof does the client need? The merits come after those, because a client in the wrong forum or past the deadline never reaches them.

### A. *Zuch* Narrows Collection Due Process Once No Levy Is Pursued

Posture first. *Commissioner v. Zuch* was a collection due process case.[25] The taxpayer's liability was paid off when the IRS applied (offset) overpayments from later years against it. The Third Circuit held that the Tax Court kept jurisdiction. The Supreme Court reversed, 8 to 1, in an opinion by Justice Barrett, over a dissent by Justice Gorsuch.

The holding is that the Tax Court loses its jurisdiction under section 6330 once the IRS is no longer pursuing a levy. The determination that section 6330(d)(1) lets the court review is a yes-or-no decision: may the levy proceed? A dispute over the underlying liability feeds into that decision; it is not a free-standing issue the court may reach. The taxpayer's remedy for the offsets is a refund suit.

That is the trap. A refund suit has its own gates. The general rule, from *Flora v. United States*, is full payment first.[26] The claim must also be timely under section 6511, and suit follows

[25] *Comm'r v. Zuch*, 605 U.S. 422 (2025); I.R.C. §§ 6330(d)(1), 6511, 7422.

[26] *Flora v. United States*, 362 U.S. 145, 177 (1960).

under section 7422. A taxpayer who spent two years in a collection due process case can reach the refund route after the limitations period has already run.

**WORKED EXAMPLE**

A client disputes a 2019 penalty in a collection due process hearing. A 2021 refund posts, and the IRS offsets it against the 2019 balance. The IRS drops the levy, and the Tax Court dismisses for lack of jurisdiction. The client now needs a refund claim, and the clock may have run while the hearing was pending. (This is a teaching illustration, not a client matter.)

Congress has begun to answer. H.R. 6506, the House-passed bill noted in Part I.D, would suspend the section 6511 period while a hearing and the related Tax Court case are pending. It would also bar the IRS, without the taxpayer's consent, from crediting overpayments from other periods against a liability properly disputed in the hearing, and it would preserve Tax Court jurisdiction over a properly raised underlying-liability challenge even if the IRS abandons collection. Sections 308 and 309 of the Senate-passed Taxpayer Assistance and Service Act cover much of the same ground: they would suspend the section 6511 period during the hearing, bar offsets against a liability properly disputed there, and let the Tax Court determine overpayments in a collection due process case. Neither bill is law. Until one moves, *Zuch* controls.

**PRACTICE POINTER**

In every collection due process case with an underlying-liability dispute, file a protective refund claim (one filed to hold the deadline open while the dispute plays out) at the start for any amount paid or offset, and again after each later offset. Do not rely on a bill. Protect the claim as if *Zuch* were the whole law.

### B. Section 6751(b): Three Timing Rules and a Split Among the Circuits

Section 6751(b)(1), described in Part I.C, requires written supervisory approval of the initial penalty determination. Section 6751(b)(2) exempts the late-filing, late-payment and estimated-tax additions, the section 6662 penalties under section 6662(b)(9) and (10), which reach overstated section 170(p) deductions and deductions disallowed by section 170(h)(7), and penalties calculated automatically by electronic means. The statute does not say when approval must come. The final regulations, T.D. 10017, which apply to penalties assessed on or after December 23, 2024, supply three timing rules.[27] If the penalty appears in a pre-assessment notice that lets the taxpayer petition the Tax Court, approval must come on or before the date the notice is mailed. If the penalty is first raised in the Tax Court, approval must come no later than the date the Commissioner asks the court to determine it. For any other penalty, approval must come before assessment.

Figure 5 maps the three rules.

[27] I.R.C. § 6751(b)(1); Treas. Reg. § 301.6751(b)-1; T.D. 10017, 89 Fed. Reg. 104,419 (Dec. 23, 2024); H.R. 5346, 119th Cong. (2025); S. 5441, 119th Cong. § 112 (2026)

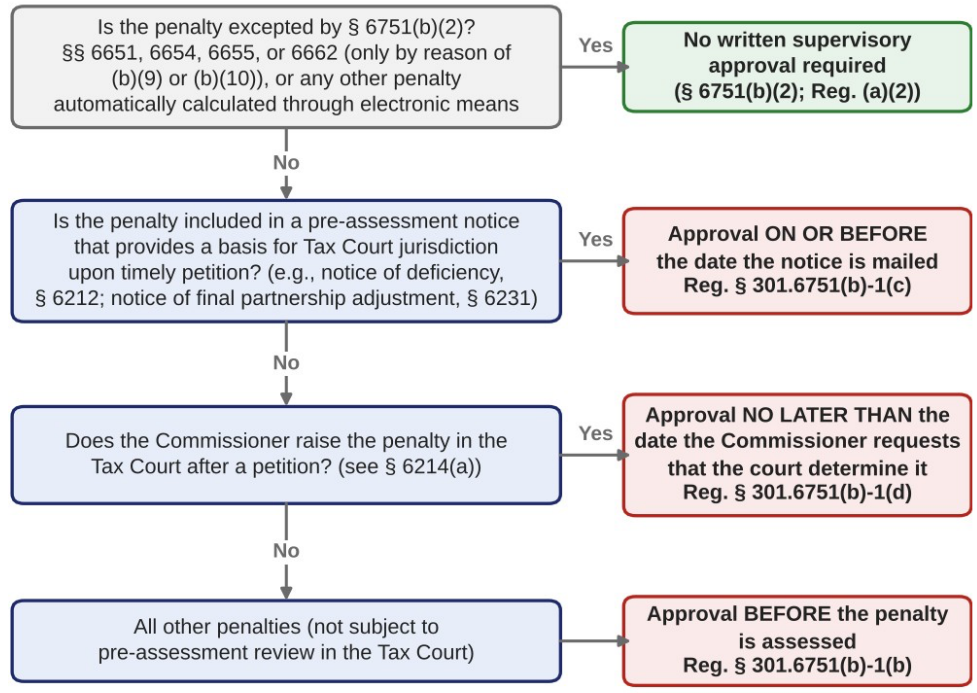



Figure 5. When must a supervisor approve a penalty? The three timing rules of Treas. Reg. § 301.6751(b)-1. Source: 26 C.F.R. § 301.6751(b)-1 (T.D. 10017, 89 Fed. Reg. 104,419 (Dec. 23, 2024)); I.R.C. § 6751(b)(2).

Now the complication. The circuits do not agree with each other or with the regulations. The Fifth and Ninth Circuits require approval before assessment or, if earlier, before the supervisor loses discretion to decide. The Eleventh Circuit requires approval before assessment and has left the discretion question open. The Second Circuit, which binds New York, Connecticut, and Vermont, held in *Chai* that approval must come no later than the notice of deficiency, or the answer if the Commissioner first asserts the penalty there. The Tenth Circuit, in an unpublished order, also requires approval no later than the date the notice of deficiency issues. The Tax Court's own cases require approval before the first formal communication of the penalty.[28] So venue (which circuit an appeal would go to) and the approval record in the administrative file can still decide the outcome. Read the three regulatory rules carefully against the posture of the case, which differs for examination, Appeals, and docketed cases.

[28] *Chai v. Comm'r*, 851 F.3d 190, 221 (2d Cir. 2017); *Laidlaw's Harley Davidson Sales, Inc. v. Comm'r*, 29 F.4th 1066, 1074 (9th Cir. 2022); *Swift v. Comm'r*, 144 F.4th 756 (5th Cir. 2025), *cert. denied*, No. 25-680 (U.S. Apr. 20, 2026); *Kroner v. Comm'r*, 48 F.4th 1272, 1276, 1279 n.1 (11th Cir. 2022); *Minemyer v. Comm'r*, Nos. 21-9006, 21-9007 (10th Cir. Jan. 19, 2023) (unpublished order and judgment; not precedential); *Clay v. Comm'r*, 152 T.C. 223 (2019), *aff'd on other grounds*, 990 F.3d 1296 (11th Cir. 2021); *Belair Woods, LLC v. Comm'r*, 154 T.C. 1 (2020).

The legislative fix would end the fight. H.R. 5346 and section 112 of the Senate-passed bill each would set one statutory rule. Neither is law.

**PRACTICE POINTER**

Ask for the supervisory approval record on day one, before the posture decides which timing rule you are in. A missing or late approval is a defense today, and the pending bills would replace the competing timing rules with one.

### C. International Information-Return Penalties After *Farhy*, *Mukhi*, and *Safdieh*

The question is whether the IRS can assess the penalties for failing to file international information returns, such as Form 5471 under section 6038(b), or must sue to collect them. An assessable penalty can be collected administratively, subject to notice and demand, collection due process rights, and the statutory exceptions. A penalty that is not assessable requires a suit in district court.

The Tax Court held that section 6201(a) gives no authority to assess those penalties. The D.C. Circuit reversed that holding in *Farhy v. Commissioner*.[29] The Tax Court declined to follow it in *Mukhi v. Commissioner*, a supplemental opinion reviewed by the full court, with one dissent, that kept its position on reconsideration.[30] Under the *Golsen* rule the Tax Court follows the law of the circuit to which appeal lies, and the appeal in *Mukhi* lay to the Eighth Circuit, which had no controlling holding.

Then the Second Circuit weighed in. In *Safdieh v. Commissioner*, a panel opinion by Judge Cabranes vacated the Tax Court's judgment: "[W]e hold that the Commissioner can assess penalties incurred under § 6038(b)."[31] For a client in New York, Connecticut, or Vermont, assessability of a section 6038(b) penalty is no longer an open defense unless the Supreme Court takes the case and reverses. The opinion does not address the related penalties, so test each one on its own text. Justice Sotomayor extended the time to ask the Supreme Court for review (a petition for certiorari) to November 23, 2026. As of November 1, 2026, the sources I reviewed do not show that a petition has been filed. If one is filed and granted, the Supreme Court will decide the question nationally.

So in the Second Circuit, spend the client's money on the defenses that remain: supervisory approval (the record from Part III.B), reasonable cause, and the amount. Outside the Second and D.C. Circuits the assessability argument remains open, subject to the forum rules above. Section 204 of the Senate-passed bill would settle the fight going forward, though it disclaims any inference about earlier periods. The Journal's *International Penalty Manual* takes each penalty statute on its own text, with the assessment, limitations, and court-review questions this Part only touches.[32]

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[29] *Farhy v. Comm'r*, 100 F.4th 223 (D.C. Cir. 2024), *rev'g* 160 T.C. 399 (2023); I.R.C. §§ 6038(b), 6201(a).

[30] *Mukhi v. Comm'r*, 162 T.C. 177 (2024), *adhered to on reconsideration*, 163 T.C. 150 (2024) (reviewed); *Golsen v. Comm'r*, 54 T.C. 742 (1970), *aff'd*, 445 F.2d 985 (10th Cir. 1971).

[31] *Safdieh v. Comm'r*, 169 F.4th 102 (2d Cir. 2026), No. 25-501-cv, slip op. at 16 (Feb. 27, 2026) (Cabranes, J., for a panel that included Jacobs and Lohier, JJ.), *reh'g denied* (June 24, 2026); *Farhy*, 100 F.4th 223. The quotation is the holding sentence of the opinion's Conclusion, at slip op. 16; the court vacated and remanded. Pin citations are to the slip opinion. *See also* Application for Extension of Time to File a Petition for a Writ of Certiorari, No. 26A314. S. 5441, 119th Cong. § 204 (2026), would address the question prospectively; *see* § 204(c)(2) (no inference).

### D. *Kwong*: A Timeliness Holding, an Appeal, and a Wave of Claims

*Kwong* matters more to more of your clients than any other case this year. It is also the case most often described more broadly than it was decided, so I take it in steps.

**1. The statute and the holding.** In December 2019 Congress added subsection (d) to section 7508A. When the President declares a federal disaster, a period must be disregarded for a qualified taxpayer (generally one who lives, does business, or keeps records in the disaster area). The period begins on the earliest incident date in the declaration and ends sixty days after the latest incident date. It is disregarded in deciding whether tax acts were timely, in computing interest and penalties, and in determining the amount of any refund.[33] In plain terms, those days do not count.

In *Kwong v. United States*, decided November 25, 2025, the Court of Federal Claims read the statute as mandatory and self-executing, meaning it applies without any action by the IRS.[34] It treated the latest incident date for the COVID-19 declarations as the end of the incident period, May 11, 2023, which FEMA fixed by notice in February 2023. Sixty days later is July 10, 2023. The disregarded period therefore ran from January 20, 2020 through July 10, 2023, 1,268 days counting both ends. The court rejected the one-year limit in Treas. Reg. § 301.7508A-1(g) after *Loper Bright*, and held that Terry Kwong's refund suit, filed in February 2023, was timely under section 6532(a) as to the penalties for 2007, 2010, and 2011. It granted the government summary judgment on his other claims, including those for 2015 and 2016. Earlier, in *Abdo v. Commissioner*, the Tax Court had read the same statute as mandatory and held that it postponed a petition deadline at least sixty days, from January 20 through March 20, 2020. The petition fell inside that window, so the court did not decide when the period ended, and the government did not appeal.

Keep one distinction in mind. The holding is that the refund suit was timely. The claims wave rests on a further step: that no penalties or interest should have accrued in the window. If the days are disregarded, section 7508A(a)(2) reaches deadline-driven charges, such as the failure-to-file and failure-to-pay additions and the interest that follows them. The disregarded days do not reach the accuracy-related penalty under section 6662, which turns on what the return reports, not on when it was filed; a Tax Court judge said as much in an order in *Bowen*.[35] Whether interest stopped on balances with no deadline in the period is an open question.

**2. The appeal and the IRS's position.** The parties then agreed to a final judgment for Kwong so the government could appeal. The government filed its notice of appeal May 15, 2026, and the Federal Circuit docketed No. 26-1843 on May 20. The government's opening brief followed September 16, 2026. Its main argument is that a date is a date: the March 2020 declarations named one incident date, so the disregarded period ran from January 20 through

[32] Frank Agostino, *Twenty-Five Thousand Dollars and No Phone Call: The International Penalty Manual*, J. Tax Controversy (Taxpayers Assistance Corp., Oct. 18, 2026).

[33] I.R.C. § 7508A(d) (2019) (enacted by Pub. L. No. 116-94, div. Q, tit. II, § 205(a)), *redesignated* § 7508A(e) by Pub. L. No. 119-29, § 2 (2025).

[34] *Kwong v. United States*, 179 Fed. Cl. 382 (2025), *appeal filed* (Fed. Cir. May 15, 2026), No. 26-1843, ECF No. 18 (Fed. Cir. Oct. 7, 2026) (order extending appellee's brief deadline to Nov. 25, 2026); *Abdo v. Comm'r*, 162 T.C. 148 (Apr. 2, 2024); I.R.C. §§ 6532(a), 7508A(d); Treas. Reg. § 301.7508A-1(g); *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024).

[35] *Bowen v. Comm'r*, T.C. Dkt. Nos. 2215-24, 2216-24, 2219-24, 562-25 (July 21, 2026) (Buch, J.) (order denying motion for leave to amend petition; reasoning that an extension of deadlines under section 7508A would not affect the accuracy-related penalties at issue, and not deciding the scope of section 7508A relief). The order is not precedential.

March 20, 2020, and the clock restarted the next day. Its fallbacks are a period ending sixty days after the President's declaration for the taxpayer's state (May 21, 2020 for California) or a period capped at one year. The brief warns that the lower court's reading would reach tens of millions of taxpayers and tens of billions of dollars. I cite the claim count, not those estimates, because the dollar figures trace to a newspaper report and an Advocate estimate, not to a published computation. On October 7 the court extended Kwong's answering-brief deadline to November 25, 2026. The case is not on the court's November or December 2026 argument calendars.

The IRS's Action on Decision on *Abdo*, A.O.D. 2026-01, released June 1, 2026, acquiesces in result only.[36] It accepts a mandatory sixty-day postponement and nothing more. On June 22, 2026, Appeals told its officers they may grant no more than sixty days until a final decision. On July 27, 2026, the IRS told its employees to manually abate or refund penalties and interest that accrued from January 20 through March 20, 2020 on returns and payments originally due in that window. Refund claims for items due from March 21, 2020 through July 10, 2023 go to a queue named Protective Claim – Kwong; requests to abate unpaid charges on those items get a Letter 916C. Charges that began accruing before January 20, 2020 keep accruing.[37] The narrowness is the point: the IRS accepts sixty days and is fighting about the rest. Given the briefing schedule, a decision before 2027 is unlikely.

Figure 6 shows the window in dispute and the clock that runs on a claim once the IRS denies it.

[36] I.R.S. Action on Decision 2026-01, 2026-23 I.R.B. 1556 (June 1, 2026) (acquiescence in result only), *Abdo v. Comm'r*, 162 T.C. 148 (2024). Practitioner alerts published in May 2026 date the document May 15, 2026, before its Bulletin publication.

[37] I.R.M. Procedural Update SBSE-20-0726-0731 (July 27, 2026); Interim Guidance AP-08-0626-0016. The government's brief is Opening Brief for the United States, *Kwong*, No. 26-1843 (Fed. Cir. Sept. 16, 2026), as summarized in J. Accountancy (Sept. 16, 2026).

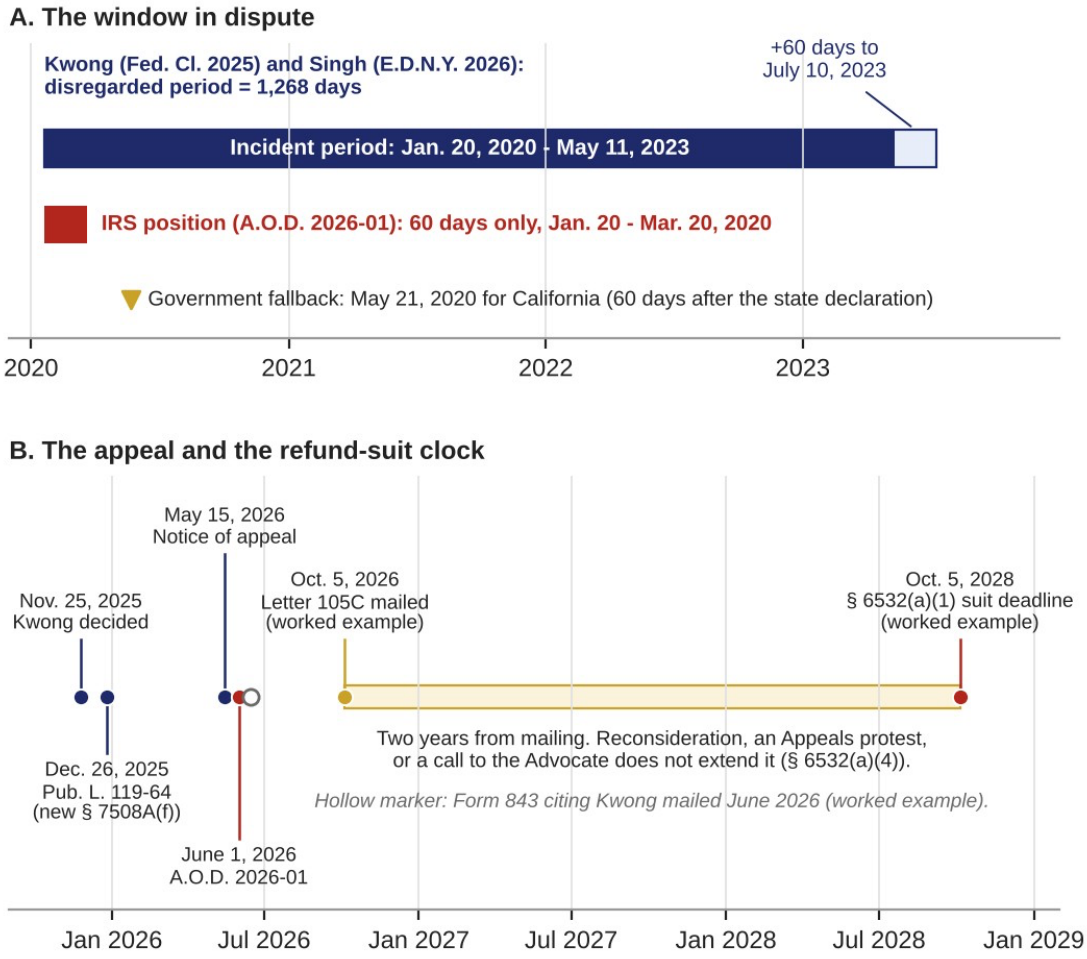



Figure 6. The *Kwong* window and the claim clock. Panel A: the period in dispute. Panel B: the appeal and the two-year refund-suit clock in the worked example below. Source: *Kwong v. United States*, 179 Fed. Cl. 382 (2025), appeal pending, No. 26-1843 (Fed. Cir.); A.O.D. 2026-01; I.R.C. § 6532(a)(1), (4); dates as stated in Part III.D and its notes.

**3. *Singh*.** Eight days after the government filed its brief, Judge Donnelly of the Eastern District of New York decided *Singh v. United States*.[38] The case began with an online romance scam, not with COVID. The court denied the government's motion to dismiss on two independent grounds. First, an earlier letter to the IRS was a valid informal refund claim, later perfected (completed) by an amended return. Second, even if it was not, the amended return was timely because section 7508A(d) extended the deadline to July 10, 2023. On that question the court reached the *Kwong* result. It held that the latest incident date is May 11, 2023, and it applied the disregarded period to the refund-amount limit of section 6511(b)(2)(A), which allowed recovery of the 2018 payment.

Three limits keep *Singh* in proportion. It is a ruling on a motion to dismiss, not a final judgment, and it binds no other court. If the parties settle, which this posture often invites, there would be no appellate review. And it decided timeliness; it did not hold that interest or a penalty stops accruing during the disaster period. Still, a district court construing the 2019 text reached the *Kwong* result over the government's objections.

[38] *Singh v. United States*, No. 1:25-cv-00056 (E.D.N.Y. Sept. 24, 2026) (Donnelly, J.). *See* Frank Agostino, *Denied Is Not Done*, J. Tax Controversy (Oct. 2026).

**4. The wave and the letters.** On October 13, 2026, the National Taxpayer Advocate reported that taxpayers had filed more than 275,000 Forms 843 asserting *Kwong* claims.[39] That counts forms, not people, valid claims, or dollars, and she calls it a small fraction of those potentially affected. The IRS is now answering, and not every letter has the same legal effect.

| What arrived | Usually means | First step |
|---|---|---|
| Letter 105C or 106C | A formal notice of claim disallowance, full or partial | Calendar two years from the mailing date |
| Letter 916C, or a letter saying the claim cannot be processed | A "no consideration" letter, not sent by certified mail (IRM 21.5.3.4.6.3); possibly not a formal disallowance | Treat as a possible disallowance; ask in writing whether it is one |
| Letter 86C | The claim was sent to another IRS office for a final answer | Keep proof of filing; ask for status |
| Silence | The claim is pending | After six months the client may sue without waiting |

Table 6. Reading the IRS's Answer to a *Kwong* Claim

A notice need not carry a particular letter number to be formal. What matters is whether it communicates a final disallowance. A formal notice sent by certified or registered mail starts a two-year period to sue under section 6532(a)(1).[40] The clock runs from mailing, not receipt. A request for reconsideration, a protest to Appeals, a call to the Taxpayer Advocate, or a pending Appeals conference runs alongside the clock; section 6532(a)(4) says none of them extends it. A Form 907 agreement can extend the period, but it is not automatic, and the taxpayer and an authorized IRS official must both sign it before the deadline. A Form 2297 waiver starts the two-year clock on the day it is filed, so no client should sign one without deciding to start the clock.

**WORKED EXAMPLE**

A taxpayer mailed a Form 843 citing *Kwong* in June 2026. The IRS mailed a Letter 105C by certified mail on October 5, 2026. Her suit deadline is October 5, 2028. If she asks for reconsideration on October 20, 2026 and Appeals is still considering the case in September 2028, the deadline has not moved. The date the letter was mailed, not the date of the last conversation, controls. (A hypothetical. Appendix B shows a completed Form 843 for a composite client in her position.)

A taxpayer who never paid the penalty or interest should not use the refund statute at all; the refund route requires payment. The fight belongs in an abatement request and, when a lien or levy notice arrives, in a collection due process hearing. There, section 6330(c)(2)(B) allows a challenge to the liability itself only if the client did not receive a notice of deficiency or otherwise have an opportunity to dispute it.

**5. What Congress fixed and what it did not.** Public Law 119-64 repaired the machinery around *Kwong*. New section 7508A(f) applies to claims filed after December 26, 2025, so every *Kwong* claim filed this year is within its reach. Whether it helps depends on whether the COVID period was disregarded under the 2019 statute, and the Act does not decide that. That is the Federal Circuit's question. If *Kwong* is affirmed, the disregarded period counts as an extension of the filing deadline for the lookback, but the claim itself must still be timely. If it is reversed, the claims that depend on it will fail in the Court of Federal Claims and be badly weakened elsewhere, though a district court refund suit is appealed to its regional circuit, which

[39] Erin M. Collins, *If the IRS Denied Your Kwong Claim*, NTA Blog (Oct. 13, 2026).

[40] I.R.C. § 6532(a)(1)–(4); I.R.S. Form 907; I.R.S. Form 2297.

the Federal Circuit does not bind. The Code now has two subsections designated (f) in section 7508A, so cite the one added in December 2025.

**PRACTICE POINTER**

List every client's COVID-era penalties and interest, and check whether a claim is already on file. If the window ran to July 10, 2023, the three-year claim period for a return due inside it and filed by then ended July 10, 2026, the date the National Taxpayer Advocate urged taxpayers to meet.[41] For a claim not yet filed, compute the section 6511 period from the actual filing and payment dates, because the two-years-from-payment rule may still leave a route open. Calendar any section 6532 two-year suit deadline from the mailing date of a disallowance letter. Answer every letter in writing, keep the envelope, and tell the client in writing which letter arrived and what clock it started. Do not promise a client more than the timeliness holding.

### E. Regulations on Trial After *Loper Bright*

After *Loper Bright*, courts review Treasury regulations without deferring to the agency's reading.[42] Taxpayers are winning, though the Commissioner is holding some ground. In *Siemens*, a reviewed opinion by Judge Kerrigan joined by all seventeen participating judges, the Tax Court held the section 245A extraordinary-disposition regulations invalid because they contradict the statutory text and rewrite the effective dates of the 2017 act.[43] In October the IRS released an action on decision, A.O.D. 2026-2, acquiescing in result only, so it will keep asserting the parts of the rules the decision did not reach. In *Keysight*, the Court of Federal Claims held on July 2, 2026, that the disqualified-basis regulation for global intangible low-taxed income (GILTI), Treas. Reg. § 1.951A-2(c)(5), is invalid: the delegation in section 954(b)(5) does not carry into section 951A, and section 7805(a) alone is not enough. In *FedEx*, the Western District of Tennessee held on February 13, 2025 that its 2023 invalidation of a section 965 foreign-tax-credit regulation survived *Loper Bright*, because the court had never deferred, and it struck a second provision of the same regulation as applied. The government has appealed to the Sixth Circuit.

The counterweight is *Lissack*. On remand after *Loper Bright*, the D.C. Circuit reviewed the whistleblower definitions rule de novo and held that it correctly implements section 7623. The lesson is that the statutory text and the scope of the delegation decide these cases. Raise regulation validity early, and in court. Part IV.B explains why Appeals will not hear it.

### F. Three Shorter Decisions to Know

*FBAR penalties and the Eighth Amendment.* The Eleventh Circuit held in *Schwarzbaum* that willful penalties for failing to file a Report of Foreign Bank and Financial Accounts (FBAR), under 31 U.S.C. § 5321(a)(5), are fines subject to the Excessive Fines Clause, splitting with the

[41] Toshia Hansen, *Act on or Before July 10, 2026, to Protect Potential COVID-19 Disaster Relief Refund Claims*, NTA Blog (July 2, 2026, updated July 6, 2026); I.R.C. § 6511(a).

[42] *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024).

[43] *Siemens Med. Solutions USA, Inc. & Consol. Subs. v. Comm'r*, 167 T.C. No. 5 (July 15, 2026) (reviewed; Kerrigan, J.; Jenkins, J., not participating); I.R.S. Action on Decision 2026-02 (released Oct. 15, 2026) (acquiescence in result only); *Keysight Techs., Inc. & Subs. v. United States*, No. 25-137 (Fed. Cl. July 2, 2026) (Tapp, J.) (invalidating Treas. Reg. § 1.951A-2(c)(5)); *FedEx Corp. & Subs. v. United States*, No. 2:20-cv-02794, ECF No. 70 (W.D. Tenn. Feb. 13, 2025) (Mays, J.), *following* ECF No. 49 (W.D. Tenn. Mar. 31, 2023) (invalidating Treas. Reg. § 1.965-5(c)(1)(ii)), *appeal docketed*, No. 25-5694 (6th Cir.); *Lissack v. Comm'r*, 125 F.4th 245 (D.C. Cir. 2025) (Pillard, J.) (on remand from the Supreme Court).

First Circuit.[44] It judged proportionality account by account, striking $300,000 imposed on an account that never exceeded $16,000 and upholding about $12.25 million. In the Eleventh Circuit, plead the defense and build the account-by-account record. Elsewhere, preserve it for the circuit split.

*Innocent spouse.* Two 2026 decisions show where section 6015 cases are won and lost.[45] In *LaRosa v. Commissioner*, the Fourth Circuit held on May 18, 2026, that an erroneously refunded underpayment-interest amount is "unpaid tax" eligible for equitable relief under section 6015(f), because section 6601(e)(1) treats underpayment interest as tax. The holding is narrow. The court left to the Tax Court whether interest since accrued on the refunded amount also qualifies, and the taxpayer gave up her claim to relief from the overpayment-interest part of the refund. In *Daidone v. Commissioner*, the Tax Court held that no valid joint return existed, so section 6015 relief was unavailable. The wife had refused to sign the 2014 joint return while a divorce was pending; the husband initialed her signature line anyway, and she later filed her own return. Check the joint-return threshold first, then the equitable factors, and document the intent to file jointly when the return is filed.

*Fraud penalties and the jury.* On June 22, 2026, the Supreme Court denied certiorari in *Hirsch v. United States Tax Court*, which asked whether the Internal Revenue Code violates the Seventh Amendment and Article III by letting the IRS assess civil fraud penalties without a jury trial.[46] A denial decides nothing on the merits. For a client facing a civil fraud penalty, nothing has changed: the argument is preserved only if it is raised, and a court of appeals may not reach it.

### G. Six More Decisions: Partners, Levies, Offers, Acknowledgments, Fraud, and Staking

*Limited partners and self-employment tax.* The statute excludes a limited partner's distributive share from self-employment income, with the words "limited partner, as such."[47] In 2023 the Tax Court in *Soroban* read that functionally: a limited partner in name who is active in the business is not a limited partner under the statute. In January 2026 the Fifth Circuit went the other way in *Sirius Solutions*, reasoning that state law decides who is a limited partner. On rehearing in August it withdrew that opinion for *K Alain* (the same case, renamed), which holds that a limited partner is one who plays no significant role in managing or running the business and that performing some services does not disqualify; it vacated and remanded for that inquiry. The Second Circuit affirmed *Soroban* on September 17, 2026: a limited partner is one who, besides having limited liability, "does not run, manage, or control the partnership's business." It

[44] *United States v. Schwarzbaum*, 127 F.4th 259 (11th Cir. 2025) (substituted opinion, Jan. 23, 2025); *Bittner v. United States*, 598 U.S. 85 (2023); 31 U.S.C. § 5321(a)(5); U.S. Const. amend. VIII.

[45] *LaRosa v. Comm'r*, 176 F.4th 323 (4th Cir. 2026) (No. 24-2034, May 18, 2026) (Heytens, J.), slip op. at 5 n.1, 10–11 n.3, *vacating and remanding* 163 T.C. No. 2 (2024). Kostelanetz LLP, where the author is Counsel, represented the appellant. *Daidone v. Comm'r*, T.C. Memo. 2026-98 (Sept. 28, 2026) (Guider, J.); I.R.C. §§ 6015(f), 6601(e)(1); S. 5441, 119th Cong. §§ 301–312 (2026)

[46] *Hirsch v. United States Tax Court*, No. 25-739 (U.S. June 22, 2026) (cert. denied), *denying review of In re Hirsch*, Nos. 25-10420, 25-10426 (11th Cir. May 30, 2025) (order denying petitions for writs of mandamus). The question described in the text is the second question presented in the petition for a writ of certiorari.

[47] I.R.C. § 1402(a)(13); *Soroban Capital Partners LP v. Comm'r*, 161 T.C. 310 (2023) (pretrial opinion), *and* T.C. Memo. 2025-52, *aff'd*, Nos. 25-2079(L), 25-2250(CON), slip op. at 30, 56–57 & nn.15–16 (2d Cir. Sept. 17, 2026) (Chin, J.); *Sirius Solutions, L.L.L.P. v. Comm'r*, 165 F.4th 374 (5th Cir. 2026), *withdrawn and superseded on reh'g*, *K Alain, L.L.L.P. v. Comm'r*, No. 24-60240 (5th Cir. Aug. 12, 2026). The rehearing and certiorari dates are computed under Fed. R. App. P. 26(a)(1)(C) and 40(d)(1) and Sup. Ct. R. 13.1.

saw little daylight between its test and *K Alain*'s, if it read the Fifth Circuit correctly; it agreed that a limited partner may perform some services, noted that the Fifth Circuit had not explained what a non-significant role is, and said the principals would fail that test too. Rehearing in the Second Circuit may be sought through November 2, 2026; absent rehearing, a petition for certiorari is due December 16. Neither had been reported as of November 1. *Denham Capital Management* is pending in the First Circuit. For a fund-manager client in the Second or Fifth Circuit, the question now looks much the same: does the partner run or manage the business?

*A levy without a notice of deficiency.* In *Walker v. Commissioner*, the IRS assessed the repayment of an excess advance premium tax credit without a notice of deficiency.[48] The Tax Court held that the amount was a deficiency, so the IRS had to follow the section 6213 procedures; the assessment was invalid, and Appeals abused its discretion when it sustained a proposed levy on an erroneous view of the law. A legal error is an abuse of discretion.

*Offers in compromise and section 280E.* In *Mission Organic Center*, a reviewed opinion with three dissents, a cannabis dispensary offered to compromise its liability, and Appeals, as the Internal Revenue Manual (IRM) directed, computed what the taxpayer could pay without the expenses section 280E disallows.[49] Sixteen of nineteen judges held that was within its discretion. A companion case for a later period was remanded because the settlement officer mischaracterized the taxpayer's argument and misstated the record. Again, the record decided it.

*Acknowledgment letters.* In *Martin v. Commissioner*, two cousins who co-owned land appraised at $665,000 donated it to Highland City, Utah.[50] No document stated that the city gave nothing in return; the deed in fact recited $10 "and other good and valuable consideration." The acknowledgment requirement is in section 170(f)(8) itself, not in a regulation, and the Tax Court applies it strictly, rejecting substantial compliance. With no merger clause to show that the deed was the whole agreement, nothing supplied the missing statement, and the entire deduction for the land fell.

*Fraud and the adviser you deceived.* In *Aryanpure v. Commissioner*, a physician moved clinic receipts into personal accounts hundreds of times, kept them off the business books, and gave his CPA incomplete and misleading information.[51] The section 6663 fraud penalty stood against him, though not against his wife. His reasonable-cause defense failed, because relying on a professional requires giving the professional the facts.

*Staking rewards.* In *Paschall v. Commissioner*, a memorandum opinion decided on stipulated facts in a case the taxpayers argued themselves, proof-of-stake rewards (new tokens paid for helping validate a blockchain) credited to the taxpayer's exchange account were gross income in the year received, because he could sell them at will; a platform transfer restriction

[48] *Walker v. Comm'r*, T.C. Memo. 2026-4 (Jan. 8, 2026); I.R.C. §§ 36B(f), 6211(a), 6213(a), 6330(c)(1); *Hoyle v. Comm'r*, 131 T.C. 197 (2008).

[49] *Mission Organic Ctr., Inc. v. Comm'r*, 165 T.C. No. 13 (Dec. 16, 2025) (reviewed; 16 judges in the majority, 3 dissenting); *Mission Organic Ctr., Inc. v. Comm'r*, T.C. Memo. 2025-130 (Dec. 16, 2025) (remanding for a supplemental hearing); I.R.C. §§ 280E, 6330, 7122; I.R.M. 5.8.5.

[50] *Martin v. Comm'r*, T.C. Memo. 2026-39 (May 14, 2026); *Martin v. Comm'r*, T.C. Memo. 2026-40 (May 14, 2026); I.R.C. § 170(f)(8)(A)–(B); *Izen v. Comm'r*, 148 T.C. 71 (2017), *aff'd per curiam*, 38 F.4th 459 (5th Cir. 2022).

[51] *Aryanpure v. Comm'r*, T.C. Memo. 2026-48 (June 10, 2026); I.R.C. §§ 6663(a), (c), 6664(c)(1); *see Neonatology Assocs., P.A. v. Comm'r*, 115 T.C. 43 (2000), *aff'd*, 299 F.3d 221 (3d Cir. 2002).

did not defeat his dominion and control.[52] The court did not need Rev. Rul. 2023-14. Do not treat the case as a general rule for every staking arrangement. Brokers have been filing Form 1099-DA for 2025 sales of digital assets. Staking rewards are not reported on it, but a later sale of the rewarded tokens through a broker is, so matching notices on digital assets follow.

## IV. The Agency Your Clients Will Meet in 2027

The courts decide a few cases. The agency decides most of them. This part covers what Appeals now offers, what it still will not do, and how the agency itself has changed.

### A. Appeals Expands Alternative Dispute Resolution

Announcement 2025-6, issued January 15, 2025, made the largest changes to Appeals alternative dispute resolution in years; the pilots run through January 15, 2027.[53] Fast Track Settlement, which lets Examination and Appeals work a case together while it is still with the examiner, is now available issue by issue in the Large Business and International, Small Business and Self-Employed, and Tax Exempt and Government Entities divisions. It used to be all or nothing: one ineligible issue kept the whole case out. Now a practitioner can ask to fast-track the eligible issues and send the rest the usual route.

Four other changes matter. Using Fast Track Settlement no longer bars Post-Appeals Mediation, so a client who tries one keeps the other. A new Small Business and Self-Employed pilot, Last Chance Fast Track Settlement, has Appeals reach out after the protest is filed and before Appeals takes jurisdiction. Denying Fast Track or mediation now requires first-line executive approval and a written explanation. And on October 1, 2025, the IRS announced a two-year Post-Appeals Mediation pilot in which an Appeals team with no connection to the case represents Appeals before a mediator who also has no connection to it.

In a multi-issue examination, I sort the issues by readiness, ask for Fast Track on the ones with a record, and keep the contested issue for Appeals. In the protest, I say expressly that I want mediation available afterward. I would not tell a client that these pilots will exist in 2028.

### B. What Appeals Will Not Do

The Taxpayer First Act regulations of January 2025 codify the right to Appeals and its exceptions.[54] One matters to the cases in Part III.E: Appeals will not consider a challenge to a Treasury regulation's validity unless a federal court has issued an unreviewable decision invalidating the regulation as a whole or the challenged provision. *Siemens* will meet that test, for the provision it struck down, once it is final. Otherwise, take the argument to court. Under IRM 8.6.1.7 and 8.6.1.7.2, Appeals also does not raise new issues absent fraud, malfeasance, or misrepresentation of a material fact, though it may weigh new theories supporting a position already in the case. When the examination file is undeveloped and the taxpayer has offered no new information or evidence, Appeals tries to settle on the factual hazards the record shows.

[52] *Paschall v. Comm'r*, T.C. Memo. 2026-46 (June 4, 2026); Rev. Rul. 2023-14, 2023-33 I.R.B. 484; Treas. Reg. § 1.6045-1 (T.D. 10000); Instructions for Form 1099-DA (2026) ("Do not report rewards and staking payments on Form 1099-DA.").

[53] I.R.S. Announcement 2025-6 (Jan. 15, 2025); I.R.S. News Release IR-2025-14 (Jan. 15, 2025); I.R.S. News Release IR-2025-100 (Oct. 1, 2025).

[54] Treas. Reg. § 301.7803-2(c)(19) (T.D. 10030, 90 Fed. Reg. 3645 (Jan. 15, 2025)); Taxpayer First Act, Pub. L. No. 116-25, § 1001, 133 Stat. 981 (2019); I.R.M. 8.6.1.7, 8.6.1.7.2, 8.6.1.7.5, 8.6.1.7.6; H.R. 5349, § 605(a), 119th Cong. (as amended by the Senate Sept. 30, 2026).

New taxpayer evidence can send the case back to Examination, and a new taxpayer theory can go to Examination for comment. So develop the facts at examination: the hazards Appeals can weigh are the hazards your record shows. Section 605 of the Senate-passed bill, as the Senate Finance summary describes it, would have Appeals weigh all hazards of litigation without exception, though the IRS could still keep out of Appeals a claim that a regulation is procedurally invalid, absent a final court decision. That is not law.

### C. The Taxpayer Advocate Reports a Smooth Season, With Warnings

The National Taxpayer Advocate's 2025 Annual Report, released January 28, 2026, described a smooth 2025 filing season and reported that the IRS processed more than 165 million individual returns during 2025, with an average refund of $3,167.[55] It paired that finding with warnings about the 27 percent workforce cut and the burden of implementing the new law. Among the most serious problems it flagged were refund delays, paper processing, telephone service, and confusing disallowance notices, the problem *Kwong* claimants now face. The FY 2027 Objectives Report of June 24, 2026, called the 2026 season "largely successful" but reported that more than half a million identity-theft cases were pending at the end of the filing season, with waits of about twenty months. Set client expectations accordingly: paper and identity-theft matters run slowly.

### D. A Leaner IRS, and Why Written Records Win Cases

Using IRS data as of June 4, 2025, the Advocate reported that a workforce of 102,113 in January 2025 was projected to fall to 75,702 after separations, a decline of about a quarter.[56] Leadership has rotated. Commissioner Werfel left; acting commissioners followed; Billy Long was confirmed June 12, 2025, and removed that August; and Treasury Secretary Bessent then served as acting commissioner. Frank Bisignano was named IRS chief executive officer on October 6, 2025. The commissioner post is vacant; on March 13, 2026, the IRS announced that Secretary Bessent's acting service had ended; the Secretary keeps the office's duties, and Mr. Bisignano runs day-to-day operations.[57] Direct File did not operate in the 2026 filing season, according to the IRS's November 3, 2025 notice to the states.

I draw four practices from these facts. Send important correspondence by a method that proves delivery. Answer every notice in writing, even if you also call. Calendar every response date from the notice, not from what the IRS does later. Log every call, with the agent's identification number. When the IRS has fewer people, the file becomes the case.

### E. A Current Use of the Postponement Power

The disaster-postponement authority at the center of *Kwong* is in use now. In Internal Revenue Bulletin 2026-44, dated October 26, 2026, the IRS published Notice 2026-63, which gives section 7508A relief to persons affected by the 2025-2026 terroristic action in Israel and postpones certain deadlines to September 30, 2027.[58] For a client in the affected group, read the notice itself for who qualifies and which deadlines move; the notice, not the headline, defines

[55] Nat'l Taxpayer Advocate, *2025 Annual Report to Congress* (Jan. 28, 2026); I.R.S. News Release IR-2026-15; Nat'l Taxpayer Advocate, *FY 2027 Objectives Report to Congress* (June 24, 2026); I.R.S. News Release IR-2026-79.

[56] Nat'l Taxpayer Advocate, *FY 2026 Objectives Report to Congress* fig. 1.3 (June 25, 2025) (data as of June 4, 2025); Pub. L. No. 119-21, § 70607, 139 Stat. 72 (2025) (task force to study a replacement for Direct File).

[57] IR-2026-36 (Mar. 13, 2026) (update on IRS Commissioner position); Federal Vacancies Reform Act of 1998, 5 U.S.C. §§ 3345–3349d.

both. The same bulletin carries temporary regulations on Trump accounts, T.D. 10056, and a final regulation that raises the estate tax closing letter user fee from $56 to $76, T.D. 10055.

## V. When a Civil Case Turns: The October 14 Enforcement Surge

On October 14, 2026, the Justice Department and IRS Criminal Investigation announced what they called the first National Tax Enforcement Surge.[59] It was led by the Justice Department's National Fraud Enforcement Division, which the Attorney General created on April 7, 2026, ran from early September to October 14, and drew on 35 United States attorneys' offices.

Read the numbers carefully. The release reports prosecutorial actions against 76 defendants and an estimated intended loss to the government of more than $490 million. That total combines 23 new charging actions against 31 defendants, with about $350 million in intended loss, and about 39 trials, guilty pleas, and sentencings affecting 45 other defendants, with nearly $140 million. These are not 76 convictions. At least one news report called them convictions; the release does not. Charged defendants are presumed innocent, and the amounts are intended loss, not tax actually lost.

The cases the release highlights are familiar: trust-fund taxes withheld and not paid over, return preparers who sought refunds on COVID-era credits, a charged trust-based shelter promotion alleged at $200 million, and an alleged $74 million refund scheme using individual taxpayer identification numbers. According to one secondary report, officials told reporters this will not be the last surge.[60] For preparers, the nearer example is the October 8 sentencing of a Freeport, New York preparer to 48 months in prison and restitution of $11,629,000, after a plea to two counts of wire fraud and one count of aiding in the preparation of false returns.[61]

One limit applies: the announcement does not say how the cases were chosen or how many began as civil examinations. The lesson for the civil practitioner is that a civil examination can become a criminal case without a clean announcement, and the client's first answer is often the one a prosecutor reads aloud.

**PRACTICE POINTER**

When a civil examination shows signs of fraud, stop and bring in counsel before the client answers anything. For a preparer, that includes any examination in which the IRS asks about refund claims you prepared on COVID-era credits or other claims that look alike across many returns.

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[58] I.R.S. Notice 2026-63, 2026-44 I.R.B. 599; T.D. 10056, 2026-44 I.R.B. 573; T.D. 10055, 2026-44 I.R.B. 571; I.R.C. § 7508A(a).

[59] Press Release, U.S. Dep't of Justice & IRS Criminal Investigation, *DOJ's Fraud Division, IRS, and IRS-CI Expose More Than $490M in Tax Fraud in National Tax Enforcement Surge* (Oct. 14, 2026), irs.gov. The release reports 23 actions with new charges against 31 defendants (about $350 million in intended loss) and about 39 other enforcement actions affecting 45 defendants (nearly $140 million). It describes prosecutorial actions and does not report 76 convictions. *Contra* Joseph Quesada, *Department of Justice Secures Over 75 Convictions In Landmark Nationwide Tax-Fraud Surge Operation*, Floridian Press (Oct. 15, 2026) (reporting "76 convictions").

[60] Jory Heckman, *Enforcement "Surge" from DOJ, IRS Uncovers $490M in Suspected Tax Fraud*, Gov't Exec. (Oct. 16, 2026), govexec.com.

[61] Press Release, IRS Criminal Investigation, *Long Island Tax Preparer Sentenced to 48 Months in Prison for Nearly $12 Million Tax Fraud Scheme* (Oct. 8, 2026), irs.gov (E.D.N.Y.).

## VI. Artificial Intelligence in the Practice

This part asks two questions. What is the IRS doing with artificial intelligence (AI), including with your clients' data? And what may you do with it, and what must you never delegate? The second answer starts with a rule you already know: you are the professional, and the tool is not. The Journal's companion article walks through each stage of a controversy, from the return to collection, with model firm protocols.[62]

### A. The IRS Already Uses It

The Government Accountability Office (GAO) counted the IRS's AI use cases in March 2026.[63] The IRS had 126 active use cases as of June 2025, up from 10 in August 2022, including models that help select returns for audit; 77 of the 126 were still in development. The 2025 workforce cuts cost the research office 63 employees who had worked full- or part-time on AI, and by May 2025 the chief technology officer had paused or suspended support for 10 of 11 use cases. By February 2026, according to IT officials, the chief technology officer's team had been disbanded, so in the period GAO reviewed, capability and oversight were shrinking together. GAO found the inventory incomplete, and the IRS agreed with all eight recommendations.

A match is a lead, not a finding. The inspector general's October 15 audit of the new deductions makes the same point from the processing side: the IRS's business rules test form, thresholds, and basic attributes, not whether a claim is substantively eligible. When a notice rests on a match, ask what the match was based on.

### B. OPR's AI Guidance Applies Duties You Already Have

The Office of Professional Responsibility (OPR) issued Circular 230 Issue No. 2026-19 on June 24, 2026, titled Introductory Guidelines for Responsible AI Use in Federal Tax Practice, its first formal guidance on AI.[64] It applies existing duties. Under section 10.22 of Circular 230, you must exercise diligence in determining the correctness of what you submit. Competence under section 10.35 means understanding what the tool does and where it fails. Section 10.36 requires a practitioner in charge of a firm to have reasonable compliance procedures, and a written use policy is the natural place for them. Section 10.37 governs written advice. On fees, OPR reads section 10.27 to expect that a fee reflect the efficiencies the tool provides; I would put that point in the engagement letter, though OPR does not mention engagement letters. The guidance also warns that client data in public tools raises exposure under sections 7216 and 6713, so consent and safeguards come before the data goes in.

One limit matters. The guidance interprets Circular 230; it does not amend it, and the amendments proposed in REG-116610-20 remain proposed.

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[62] Frank Agostino, *Artificial Intelligence at Every Stage of a Tax Controversy: From Return Preparation to Collection*, J. Tax Controversy (Taxpayers Assistance Corp., Oct. 2026) (prepared for the UCLA Extension 42nd Annual Tax Controversy Conference).

[63] U.S. Gov't Accountability Off., GAO-26-107522 (Mar. 2026).

[64] Office of Prof'l Responsibility, Circular 230 Issue No. 2026-19, *Introductory Guidelines for Responsible AI Use in Federal Tax Practice* (June 24, 2026), irs.gov/pub/opr-taxpros; 31 C.F.R. §§ 10.22, 10.27, 10.35, 10.36, 10.37; Regulations Governing Practice Before the Internal Revenue Service, REG-116610-20 (proposed).

### C. *Heppner* and the Privilege Problem

In *United States v. Heppner*, Judge Rakoff of the Southern District of New York ruled from the bench on February 10, 2026, and issued a written memorandum on February 17.[65] The court held that a defendant's chats with a consumer AI platform, Anthropic's Claude, were neither attorney-client privileged nor protected work product. They were not privileged because they were not communications with counsel, were not confidential given the platform's privacy policy, and were not made to obtain legal advice. They were not work product because the defendant created them on his own, not at counsel's direction, and they did not reflect defense counsel's strategy; defense counsel conceded that counsel had not directed the searches, and the court declined to follow *Shih v. Petal Card*. The court suggested the result might differ if counsel had directed the use. Assume that anything a client types into a consumer tool can be read back to the client in litigation. Keep privileged analysis inside privileged channels and tell clients, ideally in writing, to do the same; a client who pastes your advice into a public chatbot may have waived the very protection you were preserving. The same reasoning reaches the section 7525 privilege for communications with a CPA or enrolled agent, which applies only in noncriminal tax matters before the IRS and noncriminal federal tax proceedings, and never to written communications made in connection with promoting participation in a tax shelter.[66]

### D. Section 7216 and the Offshore Server

Section 7216 makes it a crime for a return preparer to knowingly or recklessly disclose or use tax return information except as the law allows, and section 6713 imposes a civil penalty.[67] Treas. Reg. § 301.7216-3 prescribes what a taxpayer's consent to disclosure must contain. Treas. Reg. § 301.7216-2 allows disclosure without consent only in listed circumstances, among them to a contractor that programs, maintains, repairs, tests, or supplies the equipment or software used to prepare returns, and then only as necessary for the contracted services and only if every individual who will receive the information gets written notice of the requirements and penalties of sections 6713 and 7216. The regulation says nothing about AI. It does say that the preparer-to-preparer exception does not cover disclosure so a second preparer can make substantive determinations (an analysis, interpretation, or application of the law); that use needs the taxpayer's consent. An AI vendor fits only if its use falls within a listed exception; otherwise the preparer needs a consent that meets section 301.7216-3. A vendor whose people or contractors will process or view the data from outside the United States adds a second problem. Disclosure to a preparer located outside the United States generally requires prior consent, even when the data stays on a server in the United States, and for a Form 1040 client the SSN may not be disclosed offshore unless it is sent through an adequate data protection safeguard that the consent request verifies. So the consent question comes before the tool question. For a Form 1040 client, each consent must be a separate written document with the mandatory language of

[65] *United States v. Heppner*, No. 25 Cr. 503 (JSR), ECF No. 27 (S.D.N.Y. Feb. 17, 2026) (Rakoff, J.) (memorandum stating the reasons for the Feb. 10, 2026 bench ruling), available on CourtListener (declining to follow *Shih v. Petal Card, Inc.*, 565 F. Supp. 3d 557, 574 (S.D.N.Y. 2021)).

[66] I.R.C. § 7525(a), (b); Michael B. Coverstone, *AI Risks to the Sec. 7525 Practitioner Privilege*, Tax Adviser (Oct. 31, 2026).

[67] I.R.C. §§ 6713, 7216; Treas. Reg. § 301.7216-2(c)(2)–(3), (d)(1), (d)(2), (d)(3) (Example 3); Treas. Reg. § 301.7216-3(a), (b)(4), (c)(1); Rev. Proc. 2013-14, 2013-3 I.R.B. 283, *modified by* Rev. Proc. 2013-19, 2013-11 I.R.B. 648 (mandatory consent language for Form 1040 preparers). OPR's Circular 230 Issue No. 2026-19 warns against placing client data in unsecured AI tools but does not address the consent rules or the exceptions.

Rev. Proc. 2013-14. It may be attached to the engagement letter but cannot be a clause in it, and one document cannot authorize both a use and a disclosure. Name the tools, the data, and the consent.

**WHAT ATTORNEYS AND OTHER ADVISERS ASK ABOUT SECTION 7216**

*Does section 7216 apply to an attorney?* Only when the attorney acts as a return preparer. The regulation reaches four groups: anyone in the business of preparing or helping prepare returns; anyone in the business of providing auxiliary services in connection with return preparation; anyone otherwise paid to prepare or help prepare a return for someone else; and the employees of those three who help.[68] A lawyer who prepares or helps prepare a return, including an amended return, is covered as to the information furnished for that return. A lawyer who handles an examination, an appeal, or a Tax Court case without preparing a return is generally outside the definition, because the regulation excludes a person whose service only incidentally relates to return preparation.

*What about advisers who do not prepare returns?* The same test applies: software developers, e-file providers, and anyone who receives return information from a preparer under the contractor exception provide auxiliary services and are covered. A financial planner or banker who only furnishes information to a preparer at the client's request is not.

*If section 7216 does not apply, what limits my use of AI?* For a lawyer, the professional rules do: competence, confidentiality, supervision, communication with the client, and reasonable fees. American Bar Association (ABA) Formal Opinion 512, which is advisory, reads those rules to mean that a lawyer must understand the benefits and risks of a generative AI tool, and that putting client information into a tool that keeps and learns from what it is given generally requires the client's informed consent; boilerplate in an engagement letter is not enough. Anyone who practices before the IRS also has the Circular 230 duties in Part VI.B, and a firm that prepares returns has the Safeguards Rule duties in Part VI.F.

*Does section 7216 apply to government employees?* Not when they act for the government. Section 6103 governs a federal officer or employee, and a contractor who receives returns under section 6103(n). Willful unauthorized disclosure is a felony under section 7213, punishable by up to five years in prison, and a convicted federal employee must be dismissed. Unauthorized inspection is a separate crime under section 7213A, and the taxpayer may sue for damages under section 7431.

### E. Use It as a Junior and Verify Like a Partner

The protocol is simple: use AI as a junior. It is fast and tireless, and it does not know when it is wrong. For research triage, first drafts, and cross-checking, run the same question through two systems and investigate every disagreement. A disagreement marks a point to check at the primary source; agreement proves nothing by itself. This fall I reviewed a series of 37 practitioner pieces that way. Four systems checked every piece, every citation was opened at the primary source, and every fix was verified in the final file. The office rule fits on an index card: no citation ships unverified, and no quotation ships unopened. When a system gives you a case, open the case. If it does not exist, or says something else, you have found the failure before a court did.

[68] I.R.C. § 7216(a); Treas. Reg. § 301.7216-1(b)(2)(i)–(v), (b)(3)(i)(C); ABA Comm. on Ethics & Pro. Resp., Formal Op. 512 (July 29, 2024) (generative artificial intelligence tools); I.R.C. §§ 6103(a), (n), 7213(a)(1), 7213A, 7431.

**PRACTICE POINTER**

Adopt a written protocol that covers approved tools, section 7216 consents, and verification. Circular 230 section 10.36 and OPR's Circular 230 Issue No. 2026-19 expect one.

### F. The Data Before the Tool: Safeguards Rule, Written Plan, Vendor Contract

Walter Primoff closes the session with the duties that govern client data before any tool sees it, and the first one surprises people. Under the Federal Trade Commission (FTC) Safeguards Rule, issued under the Gramm-Leach-Bliley Act, a tax preparation firm is a financial institution.[69] Each firm must develop, implement, and maintain a written information security plan scaled to its size and complexity, and must oversee its service providers. A firm that keeps customer information on fewer than 5,000 consumers is excused from four parts of the Rule: the written risk assessment, continuous monitoring or annual penetration testing, the written incident response plan, and the annual report to the board. The written plan and vendor oversight still apply. IRS Publication 4557 says what to protect, and Publication 5708 gives a template. Section 1.3 of the American Institute of CPAs (AICPA) Statement on Standards for Tax Services No. 1 adds the profession's own rule: reasonable efforts to safeguard client data in storage and transmission, safeguards based on current recommended practices, and reasonable efforts to confirm that data shared with vendors stays protected. Lawyers answer to their own jurisdiction's conduct rules; the ABA Model Rules, on which most are based, call for competence in the benefits and risks of technology and reasonable efforts to protect client information, which in practice means care in choosing vendors, knowing where data is stored, and periodic reassessment.

An AI vendor that receives client data is a service provider under the Safeguards Rule, which requires the firm to choose providers able to maintain appropriate safeguards, to require those safeguards by contract, and to reassess them periodically. Beyond that, the Rule names no specific contract terms; the ones below are recommended practice. Ask for the vendor's SOC 2 report (an independent audit of its security controls) and a written security program you can attach to your plan. Require processing, storage, backup, and failover inside the United States; a promise that your clients' data will not train the model; encryption in transit and at rest; and audit logs. On deletion, either the vendor deletes automatically or you control deletion completely. No one at the vendor should read prompts or files except trained support staff bound by confidentiality, and your firm's data should not be commingled with other customers'. OPR's Circular 230 guidance asks for the same thing from the other direction: vet third-party tools and keep a process for secure handling.

The cautionary tale is still the 2018 Krebs on Security report on thieves who hacked an accountant and read client data through a keylogger on the accountant's own computer; the report says it is not clear how the malware got there.[70] Dan Goldwasser's rule covers all of it: never let your client's tax problems become yours.

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[69] 16 C.F.R. pt. 314 (Standards for Safeguarding Customer Information), issued under 15 U.S.C. §§ 6801–6809; 16 C.F.R. § 314.4(f) (service-provider oversight); 16 C.F.R. § 314.6 (exemptions for institutions with fewer than 5,000 consumers); IRS Pub. 4557, *Safeguarding Taxpayer Data*; IRS Pub. 5708, *Creating a Written Information Security Plan for Your Tax & Accounting Practice*; AICPA, Statement on Standards for Tax Services No. 1, General Standards for Members Providing Tax Services, § 1.3 (Data Protection) ¶¶ 1.3.4, 1.3.7, 1.3.8 (eff. Jan. 1, 2024); ABA Model Rules of Prof'l Conduct r. 1.1 cmt. 8, r. 1.6(c). The tax-preparer coverage is at 16 C.F.R. § 314.2(h)(2)(viii).

**PRACTICE POINTER**

Find your written information security plan this week. If there is none, start one from Publication 5708, and put the vendor terms above into your next AI contract before any client data goes in.

## VII. Questions We Expect From the Room

Practitioners ask these questions first. Each short answer points to the part of this article that supports it and says so when the answer turns on facts.

*Did the taxpayer-rights bill pass?* The Senate passed the Taxpayer Assistance and Service Act by unanimous consent on September 30, 2026. It is not law, because the House has not concurred and does not return until November 9. See Part I.C.

*Can a client with only an ITIN claim the tips or overtime deduction?* No claimant without a Social Security number qualifies under the statutes. On a joint return, the IRS looks to the spouse who received the tips or overtime; if that spouse has a valid SSN, the couple can claim. See Part II.B.

*What will the IRS do about the new deductions?* The Inspector General reports that the IRS agreed to develop a post-processing plan by December 21, 2026. A client who claimed a deduction should keep the pay records, tip records, lender statements, and vehicle documents now. See Part II.C.

*Does the* Kwong *holding mean my client's penalties and interest are refundable?* Not yet, beyond sixty days. The IRS is abating or refunding charges that accrued from January 20 through March 20, 2020 on items due in that window. The court held a refund suit timely, the government has appealed, and the IRS accepts only a sixty-day postponement. Only a client who paid the charge can use the refund route; a client who never paid must request abatement. See Part III.D.

*Is* Safdieh *the law everywhere?* No. It binds the Second Circuit, and the D.C. Circuit agrees in *Farhy*. The Tax Court follows the circuit to which appeal lies, so elsewhere the question is open, and the time to petition for certiorari runs to November 23, 2026. See Part III.C.

*May I paste a client's return into an AI tool?* Not before the consent question is answered. Section 7216 and its regulation govern what a preparer may disclose, and after *Heppner* a client's chats on a consumer platform may not be privileged. See Part VI.

*When does an examination become a criminal case?* The Justice Department's release does not say how its cases were chosen. When an examination shows signs of fraud, call counsel before the client answers anything. See Part V.

*Does my firm need a written information security plan?* Yes, if it prepares returns. The FTC Safeguards Rule treats a tax preparation firm as a financial institution, and Publication 5708 gives a template. See Part VI.F.

[70] Brian Krebs, *When Identity Thieves Hack Your Accountant*, Krebs on Security (Apr. 11, 2018) (reporting a keylogger on a New Jersey CPA's computer that exposed client data and led to fraudulent refund filings).

## VIII. What Remains Unsettled

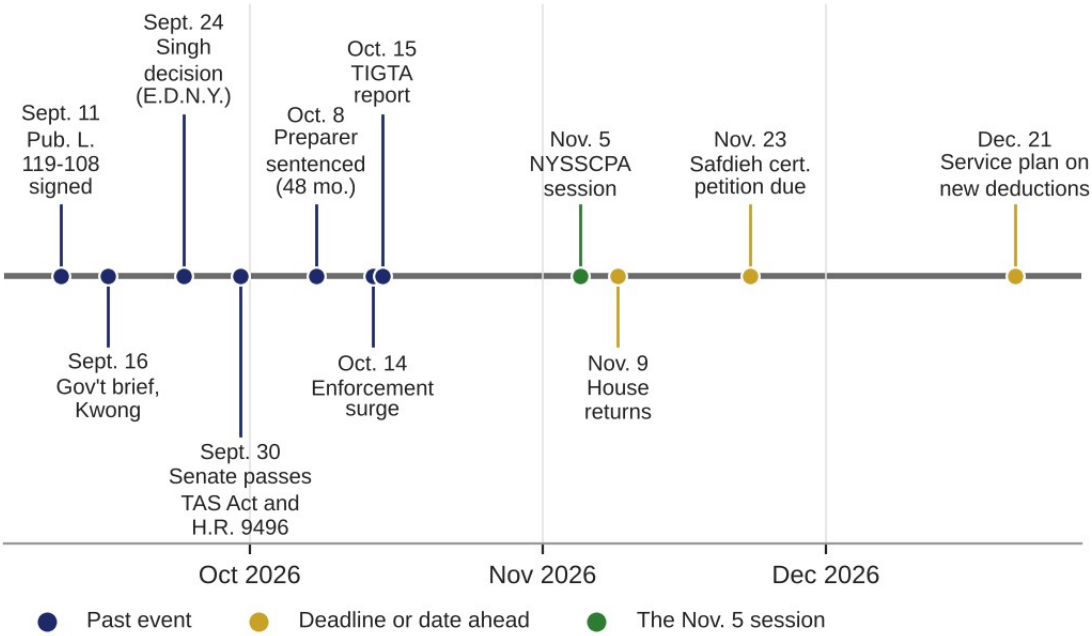



Figure 7. Dates to watch, September through December 2026. Sources are in the notes to Parts I through V.

Five questions stay open as this article goes to press, and I would rather list them than let a confident paragraph hide them.

The first is whether H.R. 997 and H.R. 9496 are presented to the President and signed, and when. The second is whether the House concurs in the Senate's version of H.R. 5349, and whether it changes anything. The third is the Federal Circuit's answer in *Kwong*, unlikely before 2027, and whether the government's fallback positions survive. The fourth is whether a petition for certiorari in *Safdieh* reaches the Supreme Court by November 23, 2026. The fifth is what the post-processing review of the new deductions will look like when the IRS delivers its plan, which it has said will be by December 21, 2026.

## IX. Monday Morning

Seven actions follow from the year. Put each one on the calendar.

### MONDAY MORNING CHECKLIST

**1.** Inventory every client's COVID-era penalties and interest, starting with who filed a claim by July 10, 2026. Calendar any section 6532 two-year suit deadline from the mailing date of a disallowance letter, because reconsideration does not toll it.

**2.** Brief your partners on sections 112, 204, and 301 through 312 of the Senate-passed bill. If the bill becomes law, the innocent-spouse and tolling changes reach cases pending at enactment and the small-case change reaches cases begun after it; the penalty-approval and refund-suit changes follow 12 months later.

**3.** In writing and before year-end, flag clients without Social Security numbers who are affected by the SSN-gated deductions. On a joint return, check the SSN of the spouse who received the tips or overtime; that is the spouse the IRS looks to. Have clients who took the tips, overtime, senior, or car-loan interest deductions keep their substantiation.

**4.** Use issue-by-issue Fast Track Settlement and the Post-Appeals Mediation pilot. Do not expect Appeals to weigh a regulation-validity argument; raise it in writing to preserve it, then take it to court.

**5.** Adopt a written AI protocol covering approved tools, section 7216 consents, and verification.

**6.** When a civil examination shows signs of fraud, call counsel before the client answers.

**7.** Find the firm's written information security plan, or start one from Publication 5708, and put the vendor terms in Part VI.F into the next AI contract.

## Appendix A. A Letter a Reader May Send

Several readers asked how to tell Congress what they think of the Senate-passed bill discussed in Part I.C. The form below is one way. If you use it, send it in your own name to your own Representative, and change any word that does not fit. It is useful only until the 119th Congress adjourns.[71]

**FORM LETTER TO A REPRESENTATIVE**

[Date]

The Honorable [Name]
United States House of Representatives
Washington, DC 20515

Re: H.R. 5349, the Taxpayer Assistance and Service Act, as amended by the Senate

Dear Representative [Name]:

I am a [certified public accountant / enrolled agent / attorney / taxpayer] in [town], in your district. [In my practice I prepare returns and represent taxpayers before the Internal Revenue Service.] I write to ask you to support a House vote to concur in the Senate amendment to H.R. 5349, which the Senate adopted on September 30, 2026.

The Senate passed the Taxpayer Assistance and Service Act by unanimous consent, after the Senate Finance Committee approved its text 26 to 1. Many of its provisions come from the National Taxpayer Advocate's recommendations to Congress. The Senate-passed text would:

• require written approval of a penalty, by the immediate supervisor or the Servicewide Penalties office, no later than the first notice that the taxpayer can take to Appeals or to court (section 112);

• make the deadlines for deficiency, innocent-spouse, and collection due process petitions subject to equitable tolling (section 307), and raise the small-case limit from $50,000 to $100,000, indexed (section 312);

• give the National Taxpayer Advocate independent counsel, personnel, and access to information (sections 401 through 403);

• make it a felony to furnish an invalid preparer tax identification number willfully, with intent to evade the requirement to obtain one (section 502); and

• require the Independent Office of Appeals to weigh all hazards of litigation, "without exception" (section 605).

[One or two sentences from your own experience, such as a deadline missed by a day or a penalty asserted before anyone approved it. Do not identify a client or disclose client information without the client's consent.] I would be glad to answer any question you or your staff may have.

Respectfully,

[Name]
[Home address, so the office can confirm you are a constituent]
[Email address and telephone number]

[71] The bill has bipartisan sponsors, and the form supports or opposes no candidate or party. The bill also cuts against some clients. Section 204 would make the international information-return penalties assessable, which would end, going forward, a defense some clients now have (Part III.C). A reader who opposes a provision should say so, and a reader who writes on firm letterhead should first have the firm's approval.

## Appendix B. Form 843: A Protective *Kwong* Claim (Composite)

The form below is filled in for a composite client, not a real taxpayer; the name, identifying number, tax year, amount, and dates are invented. It shows how the protective claim discussed in Part III.D looks on the December 2024 revision of Form 843. Line 1 gives the tax period, line 2 the amount, and line 3a the payment date. Line 6 names the penalty section, section 6651(a)(1). Box 7c is checked as the reason. On this revision the explanation goes on line 8, not line 7, and it states the claim and the authority, including that *Kwong* is on appeal. The choice of box 7c and of the reason box on page 1 is the author's reading of the form; check the current instructions before filing. For a fully paid *Kwong* penalty or interest claim, the IRS has also posted specific directions (page updated July 1, 2026): certain individuals with an IRS Online Account may file Form 843 through a secure application on IRS.gov, and paper claims go to Internal Revenue Service, 1973 N Rulon White Blvd., Ogden, UT 84201, with "Kwong vs. United States" written at the top.

Form **843** (Rev. December 2024)
Department of the Treasury
Internal Revenue Service

**Claim for Refund and Request for Abatement**

**Go to *www.irs.gov/Form843* for instructions and the latest information.**

OMB No. 1545-0024

**Check the box below that indicates your reason for filing Form 843.**

**Tax**

- ☐ Abatement or refund of tax other than income, estate, or gift tax
- ☐ Abatement or refund of tax that can't be claimed on any form except Form 843
- ☐ Refund to employee of excess social security, Medicare, or RRTA tax withheld by any one employer, but only if your employer will not adjust the overcollection
- ☐ Refund to employee of excess tier 2 RRTA tax when, for the year, you had more than one railroad employer and your total tier 2 RRTA tax withheld or paid exceeds the tier 2 limit
- ☐ Refund to employee of social security, Medicare, or RRTA tax withheld in error, but only if your employer will not adjust the overcollection
- ☐ Abatement or refund of tier 1 RRTA tax for an employee representative

**Penalty**

- ☒ Abatement or refund of a penalty or addition to tax due to reasonable cause or other reason allowed under the law
- ☐ Abatement or refund of penalty imposed under section 6672 for failure to collect and pay over tax, or attempt to evade or defeat tax (Trust Fund Recovery Penalty)
- ☐ Refund of penalty imposed under section 6695A for misstatements due to incorrect appraisals
- ☐ Refund of penalty imposed under section 6715 for misuse of dyed fuel
- ☐ Abatement or refund under section 6404(f) of a penalty or addition to tax attributable to erroneous written advice by the IRS

**Interest**

- ☐ Abatement or refund of interest due to IRS error or delay under section 6404(e)(1)
- ☐ Request for net interest rate of zero under Rev. Proc. 2000-26

**Other**

- ☐ Abatement or refund of assessed penalties, interest, or additions to tax because you were unable to read and timely respond to a standard print notice from the IRS
- ☐ Refund of branded prescription drug fee
- ☐ Refund of annual fee on health insurance providers
- ☐ Other (specify) _____

**CAUTION:** Do **not** use Form 843 when you **must** use a different tax form. For example, do **not** use Form 843 to claim a refund or abatement of an overpayment of income taxes or an employer's claim for FICA tax, RRTA tax, or income tax withholding; a refund of excise taxes based on the nontaxable use or sale of fuels; or an overpayment of excise taxes reported on Form(s) 11-C, 720, 730, or 2290. Also, do **not** use Form 843 to claim a refund of tax return preparer or promoter penalties. See instructions for the forms to use.

| Name of person requesting the refund or abatement (see instructions) | Social security number (SSN) |
|---|---|
| Dana Rivera (composite - not a real taxpayer) | XXX-XX-1234 |
| Name of spouse if filing Form 843 relating to a joint return (see instructions) | Spouse's social security number (SSN) |
| | |

| Address (number and street or P.O. box if mail is not delivered to street address) | | | Apt., room, or suite no. |
|---|---|---|---|
| 14 Example Lane | | | |
| City, town, or post office. If you have a foreign address, also complete spaces below. | State | ZIP code | Employer ID number (EIN) |
| Hackensack | NJ | 07601 | |
| Foreign country name | Foreign province/state/county | | Foreign postal code |
| | | | |
| Name and address shown on return if different from above | | | Daytime telephone number |
| | | | |

**1** Enter the tax period or fee year. Prepare a separate Form 843 for each tax period or fee year.
Beginning date (MM/DD/YYYY) 01/01/2019 Ending date (MM/DD/YYYY) 12/31/2019

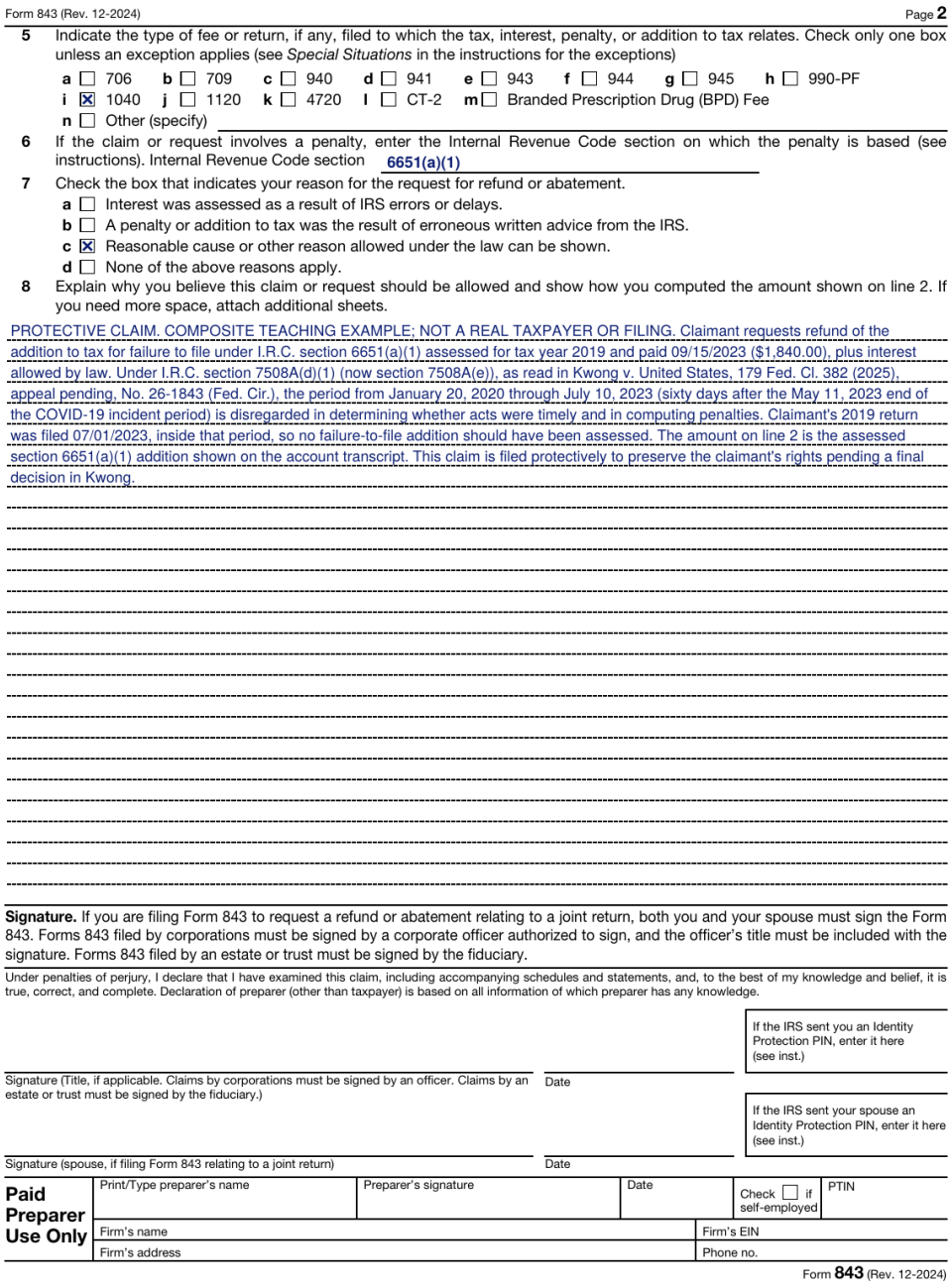
**2** **Amount to be refunded or abated.** $ 1,840.00

**3** Date(s) of payment(s) for which you are requesting a refund (MM/DD/YYYY). If you need more space, attach additional sheets.
**a** 09/15/2023 **b** _____ **c** _____ **d** _____ **e** _____ **f** _____
**g** _____ **h** _____ **i** _____ **j** _____ **k** _____ **l** _____

**4** Check the box(es) with the type of tax or fee for which you are asking a refund or abatement. Or check the box(es) with the type of tax or fee to which the interest, penalty, or addition to tax is related. Check only one box unless an exception applies (see *Special Situations* in the instructions for the exceptions).
**a** ☐ Employment **b** ☐ Estate **c** ☐ Gift **d** ☐ Excise **e** ☒ Income **f** ☐ Fee **g** ☐ Civil penalty

**For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.** Cat. No. 10180R Form **843** (Rev. 12-2024)

Figure 8. Form 843, page 1, completed for a composite client. Source: IRS Form 843 (Rev. Dec. 2024).



Form 843 (Rev. 12-2024) Page 2

5 Indicate the type of fee or return, if any, filed to which the tax, interest, penalty, or addition to tax relates. Check only one box unless an exception applies (see *Special Situations* in the instructions for the exceptions)

a ☐ 706 b ☐ 709 c ☐ 940 d ☐ 941 e ☐ 943 f ☐ 944 g ☐ 945 h ☐ 990-PF
i ☒ 1040 j ☐ 1120 k ☐ 4720 l ☐ CT-2 m ☐ Branded Prescription Drug (BPD) Fee
n ☐ Other (specify)

6 If the claim or request involves a penalty, enter the Internal Revenue Code section on which the penalty is based (see instructions). Internal Revenue Code section 6651(a)(1)

7 Check the box that indicates your reason for the request for refund or abatement.

a ☐ Interest was assessed as a result of IRS errors or delays.
b ☐ A penalty or addition to tax was the result of erroneous written advice from the IRS.
c ☒ Reasonable cause or other reason allowed under the law can be shown.
d ☐ None of the above reasons apply.

8 Explain why you believe this claim or request should be allowed and show how you computed the amount shown on line 2. If you need more space, attach additional sheets.

PROTECTIVE CLAIM. COMPOSITE TEACHING EXAMPLE; NOT A REAL TAXPAYER OR FILING. Claimant requests refund of the addition to tax for failure to file under I.R.C. section 6651(a)(1) assessed for tax year 2019 and paid 09/15/2023 ($1,840.00), plus interest allowed by law. Under I.R.C. section 7508A(d)(1) (now section 7508A(e)), as read in Kwong v. United States, 179 Fed. Cl. 382 (2025), appeal pending, No. 26-1843 (Fed. Cir.), the period from January 20, 2020 through July 10, 2023 (sixty days after the May 11, 2023 end of the COVID-19 incident period) is disregarded in determining whether acts were timely and in computing penalties. Claimant's 2019 return was filed 07/01/2023, inside that period, so no failure-to-file addition should have been assessed. The amount on line 2 is the assessed section 6651(a)(1) addition shown on the account transcript. This claim is filed protectively to preserve the claimant's rights pending a final decision in Kwong.

**Signature.** If you are filing Form 843 to request a refund or abatement relating to a joint return, both you and your spouse must sign the Form 843. Forms 843 filed by corporations must be signed by a corporate officer authorized to sign, and the officer's title must be included with the signature. Forms 843 filed by an estate or trust must be signed by the fiduciary.

Under penalties of perjury, I declare that I have examined this claim, including accompanying schedules and statements, and, to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

If the IRS sent you an Identity Protection PIN, enter it here (see inst.)

Signature (Title, if applicable. Claims by corporations must be signed by an officer. Claims by an estate or trust must be signed by the fiduciary.) Date

If the IRS sent your spouse an Identity Protection PIN, enter it here (see inst.)

Signature (spouse, if filing Form 843 relating to a joint return) Date

| Paid Preparer Use Only | Print/Type preparer's name | Preparer's signature | Date | Check ☐ if self-employed | PTIN |
|---|---|---|---|---|---|
| | Firm's name | | | Firm's EIN | |
| | Firm's address | | | Phone no. | |

Form 843 (Rev. 12-2024)

Figure 9. Form 843, page 2: the penalty section on line 6, box 7c, and the protective-claim explanation on line 8. Source: IRS Form 843 (Rev. Dec. 2024).