



United States Tax Court

Washington, DC 20217

SUNIL S. PATEL AND LAURIE
MCANALLY PATEL,

Petitioner

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent

Docket No. 24344-17, 11352-18,
25268-18.

ORDER

In T.C. Memo. 2024-34, we sustained the Commissioner's deficiency determinations. The remaining issue for decision in this case is whether Sunil S. Patel and Laurie McAnally-Patel (collectively, the Patels) are liable for accuracy-related penalties. In T.C. Memo. 2020-133, the Court granted, in part, the Patels' Motion for Partial Summary Judgment, striking the penalties under section 6662(a), (b)(2) and (6), and (i)¹ for tax year 2013, and denying the motion as to the remaining penalties. Respondent concedes section 6662(i) penalties for tax year 2016.

Therefore, after concessions and our prior rulings in this case, the following section 6662 accuracy-related penalties for 2013 through 2016 are at issue:

<i>Year</i>	<i>Penalties at Issue</i>
2013	§ 6662(b)(1)
2014	§ 6662(b)(1), (b)(2), (b)(6), and (i)
2015	§ 6662(b)(1), (b)(2), (b)(6), and (i)
2016	§ 6662(b)(1), (b)(2), and (b)(6)

Section 6662(a) and (b)(6) impose a 20 percent accuracy-related penalty on the portion of an underpayment of tax attributable to a transaction lacking economic substance within the meaning of section 7701(o).

¹ Unless otherwise indicated, statutory references are to the Internal Revenue Code, Title 26 U.S.C. (Code), in effect at all relevant times, and Rule references are to the Tax Court Rules of Practice and Procedure.

Served 07/19/24

Congress codified the economic substance doctrine in 2010 as section 7701(o). *See* Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111–152, sec. 1409, 124 Stat. 1029, at 1067–1070. In relevant part, section 7701(o) provides:

(o) Clarification of economic substance doctrine.--

(1) Application of doctrine.--In the case of any transaction to which the economic substance doctrine is relevant, such transaction shall be treated as having economic substance only if--

(A) the transaction changes in a meaningful way (apart from Federal income tax effects) the taxpayer’s economic position, and

(B) the taxpayer has a substantial purpose (apart from Federal income tax effects) for entering into such transaction. . . .

(5) Definitions and special rules.--For purposes of this subsection—

. . . .

(C) Determination of application of doctrine not affected.--The determination of whether the economic substance doctrine is relevant to a transaction shall be made in the same manner as if this subsection had never been enacted. . . .

In their reply brief, petitioners aver that the use of the word “relevant” in section 7701(o) “leaves unaddressed (and ambiguous) the application” of the codified economic substance doctrine. (Doc. 354 at 83–84). Respondent has not addressed whether section 7701(o) requires a threshold relevancy determination.

Accordingly, the Court will order additional briefing so that the parties can address the following issues:

- Whether section 7701(o) requires a threshold relevancy determination; and
- If the Court concludes that section 7701(o) requires a threshold relevancy determination, the circumstance(s) in which the economic substance doctrine is “relevant” within the meaning of section 7701(o).

The parties are advised that briefing is limited to these two issues. Briefs that do not adhere to these parameters will be stricken from the record.

Further, given the novelty of the issues, the Court welcomes amicus briefs.

In consideration of the foregoing, it is

ORDERED that on or before August 23, 2024, the parties shall file simultaneous sur-reply briefs, addressing the issues identified above. Briefs shall

conform to the Rules of this Court and shall be limited to no more than 50 pages, exclusive of the case caption and signature block. No party may use appendices, attachments, or exhibits beyond the page limit. It is further

ORDERED that any motion for leave to file a brief as amicus curiae must be filed on or before August 23, 2024. The proposed brief must be lodged at the time the motion is filed. Proposed briefs shall conform to the Rules of this Court and shall be limited to no more than 50 pages, exclusive of the case caption and signature block. No proposed brief may use appendices, attachments, or exhibits beyond the page limit.

(Signed) Courtney D. Jones
Judge