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Michael J. Wepplo & Tatyana R. Wepplo,

Petitioners

v.

Commissioner of Internal Revenue

Respondent

Docket No. 36722-21
Document No. 90

Brief of Taxpayers Assistance Center, Inc. as Amicus Curiae in Support of Neither Party

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Respondent

Docket No. 36722-21
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UNITED STATES TAX COURT

MICHAEL J. WEPPLO & TATYANA R. WEPPLO, Petitioners, v. COMMISSIONER OF INTERNAL REVENUE, Respondent.	)))))))))))	Docket No. 36722-21

BRIEF OF TAXPAYERS ASSISTANCE CENTER, INC. AS AMICUS CURIAE IN SUPPORT OF NEITHER PARTY

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INTEREST OF AMICUS CURIAE

Taxpayers Assistance Center, Inc. ("TAC") is a nonprofit corporation founded by Frank Agostino. TAC's mission is captured in its motto "Pro Bono = Tax Justice." TAC organizes and supports pro bono representation of low and moderate income taxpayers in disputes with the Internal Revenue Service, trains volunteer practitioners, and publishes practitioner educational materials, including the TAC Journal of Tax Controversy. TAC provides training and education on procedural rights to EAs, CPAs, and other tax practitioners working directly with taxpayers who cannot afford counsel.

Since the decisions in *Abdo v. Commissioner*, 162 T.C. 148 (2024), and *Kwong v. United States*, 179 Fed. Cl. 382 (2025), TAC and its volunteers have assisted unrepresented taxpayers in preparing and filing claims for refund and abatement of interest and penalties attributable to the COVID-19 disaster period under I.R.C. § 7508A.[1] That work has given TAC a practical, ground-level view of

[1] Unless otherwise indicated, statutory references are to the Internal Revenue Code, Title 26 U.S.C., in effect at all relevant times, regulation references are to the Code of Federal Regulations, Title 26 (Treas. Reg.), in effect at all relevant times, and Rule references are to the Tax Court Rules of Practice and Procedure. References to section 7508A are to the provision as in effect after its amendment on December 20, 2019, by Pub. L. No. 116-94, div. Q, § 205, 133 Stat. 2534, 3245–46 (2019), and before the amendments made by the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, § 80501(a), 135 Stat. 429, 1335 (2021) — the "2019 version" of section 7508A, following the parties' usage. Amicus notes for completeness that the Filing Relief for Natural Disasters Act, Pub. L. No. 119-29, 139 Stat. 471 (2025), later added a new subsection (c) addressing state-declared disasters, redesignated former

how the question presented by Petitioners' Rule 261 motion is experienced by taxpayers who will never file a motion, retain counsel, or read this Court's opinion, but whose liabilities and refund claims will be governed by it.

TAC files this brief in support of neither party. TAC's interest is in ensuring that the Court decides the question with full awareness of the size and circumstances of the affected class, and that the resulting opinion states a rule that the Service can administer uniformly and that low-income, as well as sophisticated taxpayers can understand and apply.

TAC's Board of Directors authorized this filing which is filed within the time set by the Court's Order of July 2, 2026. No counsel for a party authored this brief in whole or in part; no party and no party's counsel contributed money that was intended to fund the preparation or submission of this brief; and no person other than the amicus curiae, its members, or its counsel contributed money that was intended to fund the preparation or submission of this brief.

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subsections (c), (d), and (e) as (d), (e), and (f), and extended the mandatory period from 60 to 120 days, in each case effective only for declarations made after July 24, 2025. Those amendments do not apply here, and citations in this brief to section 7508A(d) are to the subsection as designated in the 2019 version

DISCLOSURE STATEMENT

Pursuant to Rule 151.1(c)(1), and consistent with Rule 20(c), Taxpayers Assistance Center, Inc. ("TAC") states that it is a nonprofit corporation exempt from federal income tax under I.R.C. § 501(c)(3), that it has no parent corporation, and that no publicly held corporation owns 10 percent or more of any interest in it.

STATEMENT OF THE NATURE OF THE CONTROVERSY, THE TAX INVOLVED, AND THE ISSUES TO BE DECIDED

This deficiency case, which concerns Petitioners' federal income tax for taxable years 2015, 2016, and 2017, was resolved by a stipulated decision entered May 12, 2025. Petitioners paid the tax and related interest and then moved, within one year of payment, to redetermine interest under Rule 261 and I.R.C. § 7481(c). Motion to Redetermine Int. Pursuant to Rule 261, Apr. 11, 2026 (Doc. 40); Order, July 2, 2026 (Doc. 50). Respondent computed underpayment interest under I.R.C. § 6601 by including the period from January 20, 2020, through July 10, 2023.

The issue to be decided is whether the 2019 version of section 7508A(d) requires that the COVID-19 disaster period plus 60 days be disregarded in determining the amount of Petitioners' underpayment interest, where the underlying liabilities first became due before January 20, 2020. Subsidiary issues include the endpoint of the mandatory postponement period under the 2019 version and whether section 7508A(a)(2) operates independently of the acts described in section 7508A(a)(1) and section 7508(a)(1). Because this brief is filed in support of neither party, amicus takes no position on how these issues should be resolved.

SUMMARY OF ARGUMENT

The parties have fully briefed the question of whether the 2019 version of section 7508A(d) requires the period from January 20, 2020, through July 10, 2023, to be disregarded in computing underpayment interest on liabilities that first became due before the COVID-19 disaster began. Petitioners' motion was filed April 11, 2026; Respondent's Response, June 18, 2026; Petitioners' Reply, August 7, 2026; and on August 25, 2026, the Court granted Respondent leave to file a sur-reply. We do not repeat the parties' textual arguments. This brief provides what the parties' briefs cannot: the perspective of the taxpayers who are not here.

First, as the Court acknowledges, its decision will govern as "a potentially very large number of taxpayers." Order, July 2, 2026 (Doc. 50). The National Taxpayer Advocate estimates that tens of millions of taxpayers were assessed penalties or interest with respect to the disaster period, and that roughly 84 percent of those who recently paid such assessments have adjusted gross income under $100,000. 2027 Nat'l Taxpayer Advoc. Objectives Rep. to Cong. 28. In this Court, approximately 78 percent of petitioners are self-represented. The taxpayers most affected by the interest accruing during the disaster period are the least equipped to litigate the question.

Second, the Service's own administration of the disaster period magnifies the need for a definitive judicial answer. Notice 2024-7 granted automatic failure-to-pay penalty relief for 2020 and 2021 but granted no interest relief and identified no rule for the question presented here. Meanwhile, the Service has built dedicated intake infrastructure, including a portal for electronic Forms 843 for claims citing *Kwong*, without published guidance saying how, or under what substantive rule, those claims will be decided.

Third, the duration and magnitude of mandatory relief must be answered by looking at the text Congress enacted and the nationwide declaration issued pursuant to it. The statutory formula fixes the duration of the suspension period by reference to the incident dates specified in that declaration, while the declaration's scope determines the breadth of any relief. Duration and magnitude therefore follow from the law Congress wrote and the declaration the President issued—not interpretive variables to be adjusted in response to fiscal consequences. The Commissioner's practical concerns are real and warrant acknowledgment. But such concerns cannot displace the text. Congress has twice adjusted the mandatory suspension period, each time prospectively only.

Fourth, because the *Kwong* appeal may never be perfected, and because a Federal Circuit decision would not bind this Court in any event, this case is the tax system's best near-term vehicle for a clear answer applicable to low-income taxpayers. An opinion that clearly identifies which liabilities, which period, and how the recomputation is to be performed will provide the greatest assistance to the community TAC services.

ARGUMENT

I. The Court's Answer Will Govern a Large Class of Taxpayers Who Are Not Before It and Who Lack the Means to Get Here.

A. The Court's July 2, 2026, Order Recognizes the Breadth of the Question.

This Court's Order of July 2, 2026, inviting amicus participation, observed that "[t]he question is one that appears to affect a potentially very large number of taxpayers and may be of some importance to the tax system," and directed that "any motions for leave to file a brief under Rule 151.1 by an *amicus curiae* must be filed on or before August 28, 2026." Order, July 2, 2026 (Doc. 50). TAC can confirm that both observations are accurate.

The National Taxpayer Advocate has confirmed the breadth of the question institutionally. Her Fiscal Year 2027 Objectives Report to Congress devotes the first systemic advocacy objective to the administration of section 7508A COVID-19 disaster-period claims, and reports: "By our estimate, tens of millions of taxpayers were assessed penalties or interest for late filings or payments during the 3.5-year period determined in *Kwong*." 2027 Nat'l Taxpayer Advoc. Objectives Rep. to Cong. The Advocate's preface frames the stakes in terms of fairness to the unrepresented:

> The requirement to file a claim or protective claim by July 10 favors taxpayers with professional representation, while the vast majority of taxpayers likely will not know they need to act and therefore will forfeit their right to recover their overpayments. That result would be

> extremely unfair and inconsistent with fundamental taxpayer rights.

2027 Nat'l Taxpayer Advoc. Objectives Rep. to Cong. ix; *see* I.R.C. § 7803(a)(3) (Taxpayer Bill of Rights). TAC represents taxpayers who both have filed refund claims and those who carry accrued and unpaid interest. Because the Court's ruling will impact taxpayers in different procedural postures, it is critical that the decision be one that the Service can administer uniformly to all taxpayers, regardless of their procedural posture.

B. The Affected Population Is Large, Disproportionately Lower-Income, and Overwhelmingly Unrepresented.

The Advocate's data describe the impacted taxpayers. "Roughly 39% of all taxpayers who had interest or penalties assessed for the identified tax periods have an adjusted gross income less than $100,000," and "[r]oughly 84% of taxpayers who have made a payment on their assessed interest or penalties within the past two years have an adjusted gross income less than $100,000." 2027 Nat'l Taxpayer Advoc. Objectives Rep. to Cong. 28.

Those taxpayers will rarely be able to litigate the question themselves. In this Court, "[i]n FY 2025, taxpayers were self-represented (pro se) in approximately 78 percent of the cases filed." United States Tax Court, Cong. Budget Justification, FY 2027, at 28 (2026). A self-represented taxpayer confronting a balance-due is unable to evaluate the nuances of the § 7508A(d) mandatory relief provisions and the interplay with other code sections. Indeed, they see only an amount described as owed, computed by the Service's systems under whichever interpretation the Service applies. For the overwhelming majority of the affected class, this Court's opinion could dramatically impact their lives by answering a question they do not know to ask.

The same population the Advocate's data identify, and that TAC represents, is the population that bore the heaviest burden of the Service's COVID-era service failures. In her 2021 Annual Report to Congress, the Advocate called calendar year 2021 "the most challenging year taxpayers and tax professionals have ever experienced." 2021 Nat'l Taxpayer Advoc. Ann. Rep. to Cong. 1 (2022). The report's own heading states that "Telephone Service Was the Worst It Has Ever Been": the IRS received about 282 million telephone calls in fiscal year 2021, but only 11 percent were answered, meaning "most callers could not obtain answers to their tax law questions, get help with account problems, or speak with a CSR to respond to a compliance notice." *Id.* at 3. For the millions of lower-income taxpayers who could not reach the IRS during the disaster period and cannot afford to litigate now, this Court's answer will be the only adjudication of their rights they will ever receive.

C. Well-Advised Taxpayers Can Litigate the Question in Post-Payment Forums; Most Ordinary Taxpayers Cannot.

The disparity is not merely one of awareness; it is one of access and means. Well-advised taxpayers with the liquidity to pay the assessed amount, including interest and penalties, and the resources to retain counsel can litigate the 7508A disaster period question in post-payment refund forums, including the Court of Federal Claims. *See BMW US Holding Corp. v. United States*, No. 25-1984T, 2026 WL 2278595 (Fed. Cl. Aug. 5, 2026); Complaint at 1, *Western Digital Corp. v. United States*, No. 26-215T (Fed. Cl. Feb. 6, 2026) (refund of underpayment interest accrued during the disregarded period on a 2008 liability; cross-motions pending). The government's appeal in *Kwong* itself is docketed in the Federal Circuit as No. 26-1843. But the Court of Federal Claims' full-payment prerequisite is often prohibitive for ordinary taxpayers: they lack the means to pay assessed interest and penalties, let alone the resources to litigate a refund claim after payment. The taxpayers TAC serves would only be able to secure relief in this forum, which makes the Court's ruling, and the Service's administration of that ruling, even more important.

II. The Service's Administration of the Disaster Period to Date Underscores the Need for a Definitive Answer.

A. The Uneven Administration of COVID-19 Relief Undermines Confidence in the Tax System.

The Service's administration of COVID-period interest and penalty relief has been uneven. Treasury regulations purport to limit the emergency period to one year. *See* Treas. Reg. § 301.7508A-1(g)(3)(ii)(A). In *Abdo*, this Court addressed the effect of regulatory limitations by holding that § 7508A(d) is self-executing notwithstanding those limitations. 162 T.C. at 165.

In addition, the Service has in some cases provided a limited suspension of interest during the COVID period, as reflected on certain account transcripts, while other taxpayers received no comparable suspension. Notice 2024-7, further illustrates the uneven administration: it granted targeted relief from failure-to-pay additions for taxable years 2020 and 2021, but provided no relief from underpayment interest and identified no governing statutory rule for the question presented here. The resulting patchwork of relief that includes partial interest suspension for some taxpayers, none for others, and penalty relief administered on a separate track undermines the public's confidence in the tax system. When Congress created a mandatory relief mechanism, a uniform rule must be applied to all taxpayers.

B. The Service Is Building Claim-Intake Infrastructure While the Governing Rule Remains Undefined.

The Service has recognized that the interest and penalties it assessed and collected throughout the COVID-19 disaster period may contravene the mandatory relief provisions Congress enacted in the 2019 version of section 7508A(d). Since July 2026, the Service has maintained a dedicated page instructing taxpayers how to file Form 843 claims "citing Kwong v. United States," including an electronic submission channel through IRS Online Account for individuals and a paper channel to the Ogden campus with the annotation "Kwong vs. United States" written across the top of the form.[2] The National Taxpayer Advocate reports that the Service "may receive a significant volume of Kwong-related claims but has not established standardized processes for handling them," 2027 Nat'l Taxpayer Advoc. Objectives Rep. to Cong. 28, and recommends that claims be "properly monitored or held in suspense, pending final resolution of litigation." *Id.* at 29.

In short, the service is collecting claims whose disposition depends on the law—a question for the courts to interpret, not for administrative guidance to decide.

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[2] Internal Revenue Service, Filing Form 843 for claims citing Kwong v. United States, https://www.irs.gov/forms-pubs/filing-form-843-for-claims-citing-kwong-v-united-states (last updated July 1, 2026). The page directs that eligible individuals with an IRS Online Account may submit electronically a "Form 843 related to fully paid interest and penalties that cite to Kwong v. United States," and that other filers should mail the form to the Service's Ogden, Utah campus after "writing 'Kwong vs. United States' across the top" of the form.

As the Supreme Court reaffirmed in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 394–95 (2024), courts must exercise independent judgment in determining statutory meaning. Every month the governing rule remains unsettled, the inventory grows, and low income taxpayers face collection and enforcement proceedings on debts they may not owe. These taxpayers need a judicial determination from this Court that can provide assurance and a path to resolution without further litigation. The Service's claim collection structure confirms that a clear path is available for these taxpayers once the law is decided by the Court.

III. Whichever Party Prevails, the Opinion Should State a Rule the Service Can Administer and Taxpayers Can Apply Without Counsel.

The National Taxpayer Advocate's first systemic advocacy objective for fiscal year 2027 asks the Service to "[s]tandardize Kwong claim processing so all claims are handled similarly," to "[p]rovide clear guidance for taxpayers," and to "[e]xplore automatic systemic relief" that would "automatically adjust penalties and interest, where appropriate, reducing the need for taxpayers to file claims to receive Kwong-based relief." 2027 Nat'l Taxpayer Advoc. Objectives Rep. to Cong. 29. Each of those recommendations, and most importantly the last, requires a rule definite enough to be programmed into the Service's systems and printed in its notices.

Amicus therefore urges the Court to write for the reader who will implement the decision at scale: the Service employee adjusting a module, the volunteer preparing a Form 843, the taxpayer reading a transcript. A holding for Respondent that turns on finely drawn distinctions among original due dates, extended due dates, and accrual periods will be applied by machines and read by non-lawyers; so will a holding for Petitioners that requires recomputing daily compounded interest across a 1,268-day disregard period.[3] In either case, the Service and low-income taxpayers need a rule that is easy to understand and administer.

IV. The Commissioner's Duration-and-Magnitude Concerns Must Be Addressed by Looking at the Statute Congress Wrote.

A. The Magnitude of the Issue is Real for Both the Service and for Taxpayers.

The Commissioner's response presses, at length, the argument that Congress cannot have intended the 2019 version of section 7508A(d) to suspend the accrual of underpayment interest nationwide for approximately three and one-half years, given the duration of the COVID-19 declarations and the fiscal magnitude of the resulting relief. Resp't's Resp. at 23–28; *see* Pet'r's Reply at 31 (addressing the argument at those pages).

Amicus acknowledges that the impact of suspending interest during the COVID-19 disaster would be significant. The disregard period Petitioners urge spans 1,268 days. The federal government's own closure of the COVID-19 incident period was announced in terms tied to disaster-assistance funding: "Notice is hereby

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[3] From January 20, 2020, through July 10, 2023, inclusive, the disregard period urged by Petitioners spans 1,268 days — approximately three and one-half years.

given that the incident period for all COVID-19 major disaster declarations and the nationwide emergency declaration will close effective May 11, 2023," and "[e]ligibility of work and costs reimbursable through Public Assistance funding will end on this date." Major Disaster Declarations and Related Determinations: Expiration of COVID-19-Related Measures, 88 Fed. Reg. 8,884 (Feb. 10, 2023). And this Court in *Abdo* expressly reserved the question of the outer bound of the COVID-19 postponement period. 162 T.C. at 169 n.13; *accord* Resp't's Resp. at 29–30; Pet'r's Reply at 46 (acknowledging the reservation). While these facts are acknowledged, the application of a statute to them does not provide a basis to rewrite it. Congressional intent cannot supersede the words of the statute.

B. Duration and Magnitude Are Consequences of the Executive's Declaration and the Statute Congress Wrote; Congress Has Twice Addressed the Statute's Scope, But Only Prospectively.

The length of the disregard period is the product of two governmental choices external to the Internal Revenue Code—a Presidential declaration describing a disaster "beginning on January 20, 2020, and continuing," California; Major Disaster and Related Determinations, 85 Fed. Reg. 20,703 (Apr. 14, 2020), and the Executive's decision to close the incident period more than three years later, Major Disaster Declarations and Related Determinations: Expiration of COVID-19-Related Measures, 88 Fed. Reg. 8,884 (Feb. 10, 2023). The magnitude of the relief, on Petitioners' reading, follows arithmetically from those choices, not from any generosity smuggled into the statute by interpretation.

Congress, moreover, has twice demonstrated that it knows exactly how to recalibrate the formula when it so chooses, and has twice done so prospectively only. In 2021, Congress severed the mandatory period's endpoint from the duration of the disaster, tying it instead to the declaration date, for disasters declared after November 15, 2021. Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, § 80501(a), 135 Stat. 429, 1335 (2021). In 2025, Congress revisited the provision again, extending the mandatory period from 60 to 120 days and addressing state-declared disasters, again only for declarations after enactment. Filing Relief for Natural Disasters Act, Pub. L. No. 119-29, 139 Stat. 471 (July 24, 2025). Those amendments show a Congress legislating the scope and magnitude of section 7508A itself, prospectively, rather than changing any part of the statute retrospectively.

It follows that the duration-and-magnitude objection, however weighty as legislation policy, cannot do interpretive work on its own. "Courts are not authorized to rewrite a statute because they might deem its effects susceptible of improvement." *Badaracco v. Commissioner*, 464 U.S. 386, 398 (1984). "[P]olicy arguments … cannot supersede the clear statutory text." *United States ex rel. Schutte v. SuperValu Inc.*, 598 U.S. 739, 758 (2023) (citation omitted). If the Commissioner's reading of the 2019 text is correct, it must be because the text says what the Commissioner says it says. The size of the relief is irrelevant. And if Petitioners' reading is correct, the size of the resulting relief is a consequence Congress has already shown itself capable of addressing, and has chosen to address prospectively only. Either way, amicus respectfully urges the Court to say expressly that the answer rests on the text, so that the opinion's authority does not appear to depend on the direction of its fiscal consequences.

V. <u>Practical Considerations Bearing on the Decision.</u>

A. The Service's Intake Infrastructure Shows That an Administrable Rule Is Feasible Once the Rule Is Known.

The electronic Form 843 channel described in Part II.B demonstrates that the Service can identify, receive, and route disaster-period claims at scale. What the infrastructure lacks is not capacity but an authoritative answer: a judicial determination of what interests and penalties are suspended, for which periods, and on which liabilities. The National Taxpayer Advocate's recommendation of "automatic systemic relief"—identifying affected accounts and adjusting penalties and interest without requiring claims at all, 2027 Nat'l Taxpayer Advoc. Objectives Rep. to Cong. 29—is feasible for exactly the same reason, and waits on exactly the same determination. A definitive merits decision from this Court is the predicate for both.

B. The Kwong Appeal Will Not Answer the Question for This Court or for the Tax System.

Respondent's briefing leans on the pendency of the *Kwong* appeal. Resp't's Resp. at 29–31. That appeal is uncertain and, for this Court, an inadequate substitute for decision. As of July 13, 2026, the United States represented to the Federal Circuit that the "Solicitor General of the United States has not yet decided whether to authorize" the appeal.[4] Moreover, *Kwong* arose in a different procedural setting: it involved a refund claim in the Court of Federal Claims, not a redetermination of interest on liabilities whose original due dates preceded the disaster period. That distinction makes this Court's resolution all the more significant: it will be the first judicial answer to the precise question whether § 7508A(d) reaches underpayment interest on pre-disaster liabilities.

Even if the *Kwong* appeal proceeds, and the decision is broad enough to cover the issues raised here, the Federal Circuit's decision will bind neither this Court nor the courts of appeals to which the affected class must otherwise look. And the Court of Federal Claims' refund jurisdiction requires full payment first — an avenue closed, as a practical matter, to most of the taxpayers TAC serves. The reviewed-and-briefed Rule 261 motion before this Court, a national forum Congress built for

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[4] Appellant's Unopposed Mot. for Extension of Time ¶ 3, *Kwong v. United States*, No. 26-1843 (Fed. Cir. July 13, 2026) (quoted in Petitioners' Reply in Support of Motion to Redetermine Interest Pursuant to Rule 261, at 4 n.3 (Aug. 7, 2026)).

taxpayers of ordinary means, is the tax system's best near-term vehicle for an authoritative answer.

C. The Opinion Should Address Scope Expressly.

Finally, amicus asks that the opinion, regardless of outcome, resolve the sub-questions on which administration will turn, expressly rather than by implication: (1) whether the disregard reaches liabilities whose original due dates preceded January 20, 2020; (2) the endpoint of the mandatory period under the 2019 version — March 20, 2020, one year, or July 10, 2023; (3) whether section 7508A(a)(2) operates independently of the acts enumerated through section 7508A(a)(1) and section 7508(a)(1); (4) whether and how the answer differs as between underpayment interest and additions to tax; and (5) the mechanics of recomputation, i.e. what time frame a correct account transcript or a correct Rule 155 or Rule 261 computation, must disregard. Each of those sub-questions is presented by the parties' briefs and each needs answers so adjustments can be made on an account by account basis.

CONCLUSION

TAC takes no position on whether Petitioners' motion should be granted or denied. It respectfully urges the Court to decide the question fully and clearly, resting the holding on the statutory text, addressing the scope questions identified above, and writing for the tens of millions of taxpayers, most of them unrepresented, whose accounts the answer will govern.

Dated: August 28, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 28, 2026, the foregoing Brief of Taxpayers Assistance Center, Inc. as Amicus Curiae in Support of Neither Party was served on the parties on August 28, 2026, via email to the emails on their briefs filed in this matter including:

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