No. 19-1124

IN THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

GENERAL MILLS, INC., AND SUBSIDIARIES,

Plaintiff-Appellant

v.

UNITED STATES,

Defendant-Appellee

ON APPEAL FROM THE JUDGMENT OF THE
UNITED STATES COURT OF FEDERAL CLAIMS
No. 14-cv-00089-PEC; JUDGE PATRICIA E. CAMPBELL-SMITH

ANSWERING BRIEF FOR THE UNITED STATES

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STATEMENT OF RELATED CASES

Pursuant to Federal Circuit Rule 47.5, counsel for the appellee state that no other appeal in or from the same civil action or proceeding in the Court of Federal Claims has previously been before this Court or any other appellate court.

GLOSSARY

Term	Definition
Code or I.R.C.	Internal Revenue Code (26 U.S.C.)
IRS	Internal Revenue Service
LCU	Large Corporate Underpayment
TEFRA	Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. No. 97-248, 96 Stat. 324
Treas. Reg.	Treasury Regulation (26 C.F.R.)

JURISDICTIONAL STATEMENT

On or about March 27, 2013, General Mills, Inc. (GMI, or taxpayer) filed administrative refund claims for the taxable years 2002 through 2006, inclusive. (Appx68-76, Appx82-95.) The IRS disallowed those claims on July 15, 2013. (Appx78-80, Appx97-99.) On January 30, 2014, GMI filed suit in the Court of Federal Claims seeking those refunds. (Appx42.) As explained in detail *infra*, the court lacked jurisdiction to award GMI the requested relief, because GMI had failed to file its administrative refund claims within the six-month limitations period in 26 U.S.C. (I.R.C.) § 6230(c)(2)(A) (2012). Accordingly, the court granted the United States' motion to dismiss the refund claims from GMI's operative complaint.[1] (Appx30.) Following the August 24, 2018 entry of a final judgment that resolved all claims of all parties (Appx1), GMI filed a timely notice of appeal to this Court (Appx775) on October 19, 2018. 28 U.S.C. § 2107(b); Fed. R. App. P. 4(a)(1)(B). This Court has jurisdiction under 28 U.S.C. § 1295(a)(3).

[1] After the briefing below, GMI filed an amended complaint asserting additional claims. (Appx639-641, Appx645-647.) These claims were ultimately settled and are not at issue in this appeal. (Appx773-774.)

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ANSWERING BRIEF FOR THE UNITED STATES

STATEMENT OF THE ISSUE

Whether the Court of Federal Claims correctly dismissed a taxpayer's claims for refund of large corporate underpayment interest for lack of jurisdiction, due to the taxpayer's failure to file its administrative claims for refund within the six-month period prescribed by former section 6230(c)(2)(A) of the Internal Revenue Code.

STATEMENT OF THE CASE

A. Overview

Taxpayer General Mills, Inc., is the common parent of an affiliated group of corporations (collectively, GMI or the GMI Group) that filed consolidated federal income tax returns for the years at issue. During those years, certain members of the GMI Group (at any given time, the GMI Partners) were also members of General Mills Cereals, LLC, a limited liability company that is treated as a partnership for tax purposes (the Partnership). The IRS examined the Partnership's tax returns, and the GMI Partners entered into agreements with the IRS that settled a number of issues at the partnership level. Adjustments based on these settlement agreements resulted in increases to GMI's tax liability, which in turn subjected GMI to statutory interest at the enhanced rate imposed on large corporate underpayments.

GMI paid its liabilities, including the enhanced interest, and filed claims for refund with the IRS nearly two years later. GMI's refund claims contended that the interest had been miscomputed, using an accrual date ("applicable date") earlier than GMI believed was appropriate. The IRS denied the claims, and GMI filed suit. Because

GMI had not filed its administrative claims for refund within the applicable six-month statute of limitations, the Court of Federal Claims dismissed GMI's judicial refund claims for lack of subject matter jurisdiction. GMI now appeals.

B. Statutory Background

Partnerships are pass-through entities that do not themselves pay federal income tax. Rather, all partnership income, deductions, and credits are allocated among the individual partners. I.R.C. §§ 701, 702; *Conway v. United States,* 326 F.3d 1268, 1271 (Fed. Cir. 2003). Partnerships are, however, required to file annual information returns reporting the partners' distributive shares of income, gain, deductions, or credits. I.R.C. § 6031; Treas. Reg. (26 C.F.R.) §§1.701-1, 1.6031(a)-1(a)(1); *United States v. Basye*, 410 U.S. 441, 448 (1973). The individual partners then report their distributive shares of those items on their own federal income tax returns. I.R.C. §§ 701-704; *United States v. Woods*, 571 U.S. 31, 38 (2013).

Before 1982, the IRS had no way of correcting errors on a partnership's return in a single, unified proceeding. *Woods*, 571 U.S. at 39. To achieve consistent treatment of all partners in the same

partnership and to remove the substantial administrative burden occasioned by duplicative audits and litigation, Congress enacted coordinated procedures for determining the proper treatment of "partnership items" at the partnership level in a single, unified audit and judicial proceeding. *See* Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA"), Pub. L. No. 97-248, § 402(a), 96 Stat. 324, 648-71, codified as amended at 26 U.S.C. §§ 6221-6234 (2012); H.R. Conf. Rep. No. 97-760, at 599-600 (1982), *reprinted in* 1982 U.S.C.C.A.N. 1190, 1371-72; *Crnkovich v. United States*, 202 F.3d 1325, 1329 (Fed. Cir. 2000).[2]

Under TEFRA, partnership-related tax matters are addressed in two stages. *Woods*, 571 U.S. at 39. First, any "errors on a partnership's return" may be corrected in "a single, unified proceeding," rather than in separate proceedings concerning individual partners. *Id.* at 38. To do so, the IRS reviews the partnership's return in order "to adjust

[2] In the Bipartisan Budget Act of 2015, Pub. L. No. 114-74, § 1101, 129 Stat. 584, 625, Congress repealed TEFRA and reformed the provisions governing partnership audits, effective for partnership taxable years beginning after 2017. The changes made by the 2015 Act have no application to this case, which involves the years 2002 through 2006. References herein to "former section" are to the corresponding section of 26 U.S.C. (2012).

'partnership items.'" *Id.* at 39; 26 U.S.C. § 6221 (2012). Then, once the adjustments to partnership items have become final, the IRS may undertake further proceedings at the partner level to make any resulting "computational adjustments" in the tax liability of the individual partners. *Woods*, 571 U.S. at 39; 26 U.S.C. § 6231 (2012). A "computational adjustment" is "the change in the tax liability of a partner which properly reflects the treatment . . . of a partnership item." 26 U.S.C. § 6231(a)(6) (2012). While certain computational adjustments are subject to the normal, pre-assessment deficiency procedures outlined in I.R.C. §§ 6212 and 6213, most computational adjustments may be summarily assessed against the partners, bypassing deficiency procedures and permitting the partners to challenge the assessments only under post-payment refund procedures. *Woods*, 571 U.S. at 39; 26 U.S.C. § 6230(a)(1), (c) (2012).

A partner may file a refund claim on the ground that the IRS "erroneously computed a computational adjustment necessary . . . to apply to the partner a settlement, a final partnership administrative adjustment, or the decision of a court in an action brought under section 6226 or section 6228(a)." 26 U.S.C. § 6230(c)(1)(A)(ii) (2012). A partner

has six months in which to file this refund claim, beginning with the date that the IRS mails notice of the computational adjustment to the partner. 26 U.S.C. § 6230(c)(2)(A) (2012). The filing of a timely administrative refund claim is a jurisdictional prerequisite to a refund suit. *See* I.R.C. § 7422(a); *United States v. Dalm*, 494 U.S. 596, 602, 608-09 (1990).

C. Factual Background

1. Tax Years 2002 and 2003

On January 12, 2005, the IRS issued a Notice of Beginning of Administrative Proceeding with respect to the Partnership's 2002 and 2003 returns. (Appx45.) While this partnership proceeding was pending, in April 2005, the IRS selected GMI's 2002 and 2003 corporate returns for examination as well. (*Id.*)

On June 15, 2007, the IRS sent GMI an examination report (Letter 950) showing "proposed changes to your tax" for the 2002 and 2003 tax years that included the results of the corporate audit. (*Id.*; Appx178.) The letter that accompanied this report identified deficiencies of more than $143 million for 2002 and of nearly $93 million for 2003. (Appx178.) The letter also stated that "If you are a 'C'

Corporation, Section 6621(c) of the Internal Revenue Code provides that an interest rate 2% higher than the standard rate of interest will be charged on deficiencies of $100,000 or more." (Appx178.)

In July 2010, the GMI Partners each entered into settlement agreements (Forms 870-LT(AD)) with the IRS in the partnership proceeding, reflecting adjustments to partnership items reported on the Partnership's 2002 and 2003 returns. (Appx257-331; Appx69; Appx74.) On August 27, 2010, the IRS sent GMI an audit statement (Form 5278) which explained how the adjustments in the settlement agreements had increased GMI's 2002 and 2003 corporate tax liabilities. (Appx332-333; Appx69; Appx74.)

The Form 5278 reflected an increase of $33,671,949 in GMI's 2002 taxable income with a corresponding deficiency in tax of $16,102,389, and an increase of $138,411,835 in GMI's 2003 taxable income with a corresponding deficiency in tax of $33,610,356. (Appx333.) The letter accompanying this Form 5278 notified GMI that the IRS would "adjust your account and figure the interest" and would "send a bill for any additional amount you owe." (Appx332.) One week later, on September 3, 2010, the IRS assessed against GMI the deficiencies reflected on the

Form 5278, plus statutory interest. (Appx186, Appx197.) On April 11, 2011, GMI made payments of tax and interest to the IRS sufficient to eliminate its account balances with respect to its 2002 and 2003 tax years.[3] (Appx187, Appx344; Appx199, Appx338.)

On April 18 and April 20, 2011, the IRS provided GMI with schedules indicating how it had computed the statutory interest.[4] (Appx338, Appx344.) For the period beginning after July 15, 2007, interest was computed and assessed at the rate applicable to large corporate underpayments, which exceeds the default underpayment rate by two percentage points. *See* I.R.C. §§ 6601(a), 6621(a)(2), 6621(c). (Appx46; Appx69; Appx74; Appx338, Appx344.) July 15, 2007 was thirty days after the Letter 950 dated June 15, 2007, which first notified GMI of proposed deficiencies for tax years 2002 and 2003. *See*

[3] GMI overpaid with respect to its 2002 tax year, resulting in a refund of $947,594.34 on April 20, 2011. (Appx188; Appx344.) GMI's payment with respect to 2003 included additional interest of $428,420.88, which the IRS assessed on May 2, 2011. (Appx198; Appx338.)

[4] The April 18 computation with respect to 2002 contained an error that was corrected in the April 20 computation. (Appx336; Appx344.) The correction of the error benefited GMI in the amount of $421,647.20. (*Id.*)

I.R.C. § 6621(c)(2)(A)(i) (defining the "applicable date" after which enhanced interest begins to accrue).

2. Tax Years 2004, 2005, and 2006

On September 26, 2007, the IRS selected GMI's 2004, 2005, and 2006 corporate returns for examination. (Appx47.) Shortly after this corporate audit began, on November 14, 2007, the IRS issued a Notice of Beginning of Administrative Proceeding with respect to the Partnership's 2004, 2005, and 2006 returns. (Appx48.)

On April 29, 2009, the IRS sent GMI an examination report (Letter 950) showing "proposed changes to your tax" for the 2004, 2005, and 2006 tax years that included the results of the corporate audit. (Appx48, Appx345.) The report identified deficiencies of more than $30 million for 2004, more than $347 million for 2005, and more than $58 million for 2006. (Appx347.) As was the case with the Letter 950 relating to 2002 and 2003, the letter for 2004-2006 referred to enhanced interest on corporate deficiencies of $100,000 or more. (Appx345.)

In November 2010, the GMI Partners each entered into settlement agreements (Forms 870-LT(AD)) with the IRS in the partnership proceeding, reflecting adjustments to partnership items reported on the

Partnership's 2004, 2005, and 2006 returns. (Appx379-477; Appx83; Appx88; Appx93.) On March 4, 2011, the IRS mailed to GMI another Letter 950 with respect to its 2004, 2005, and 2006 tax years. (Appx478). Included with the letter were multiple IRS documents that revealed how the adjustments reflected in the Partnership settlement agreements had affected GMI's corporate tax liability for tax years 2004, 2005, and 2006. (Appx480-558; Appx48-49; Appx83; Appx88; Appx93.)

The settlements increased GMI's taxable income by $102,399,600 in 2004, $68,864,807 in 2005, and $40,259,659 in 2006. (Appx491 ("partnership income"), Appx501 ("partnership income"); Appx502 (first two rows of chart); Appx523; *see also* Appx456, Appx466, Appx476 (first two columns of last line on each page). Taking into account those increases and all other adjustments, the IRS computed deficiencies in tax for GMI's 2004, 2005, and 2006 tax years of, respectively, $19,762,453, $9,250,868, and $51,977,699. (Appx482-483.) GMI remitted these amounts, together with designated interest payments, on April 11, 2011. (Appx207, Appx217, Appx226.) The IRS assessed

the tax and interest on May 9, 2011. (Appx207-208, Appx217, Appx226.)

Roughly a month later, on June 14, 2011, the IRS provided GMI with schedules indicating how it had computed the statutory interest. (Appx559-563.) For the period beginning after May 29, 2009, the interest was computed and assessed at the enhanced rate applicable to large corporate underpayments. *Id.*; *see* I.R.C. §§ 6601(a), 6621(a)(2), 6621(c). May 29, 2009 was thirty days after the Letter 950 dated April 29, 2009, which first notified GMI of proposed deficiencies for tax years 2004, 2005, and 2006. *See* I.R.C. § 6621(c)(2)(A)(i). The interest computations showed additional interest owing for each of the three years, which GMI paid (and the IRS assessed) in July 2011. (Appx561-563; Appx208-209; Appx218; Appx227.)

D. GMI's Claims for Refund of Large Corporate Underpayment Interest

On March 28, 2013, nearly two years after it had fully paid its 2002 and 2003 liabilities, GMI filed claims for refund of large corporate underpayment (LCU) interest it had paid for those tax years. (Appx47; Appx68-71; Appx73-76.) GMI claimed that the IRS had incorrectly computed the amount of such interest due on the tax underpayments

that were attributable to the application of the Partnership settlements for 2002 and 2003 to GMI's returns for those years. (*Id.*) In particular, GMI contended that the LCU interest should have been computed not from the applicable date of July 15, 2007, but instead from an applicable date of September 26, 2010, *i.e.*, thirty days after August 27, 2010, the date the IRS issued the Form 5278 corresponding to the 2002-2003 Partnership settlements. (*Id.*)

Also on March 28, 2013, GMI filed claims for refund of LCU interest it had paid for tax years 2004, 2005, and 2006. (Appx50-51; Appx82-95.) As with the earlier tax years, GMI claimed that the IRS had incorrectly computed the amount of such interest due on tax underpayments that were attributable to the application of the Partnership settlements for 2004-2006 to GMI's returns for those years. *Id.* Thus, GMI contended that LCU interest for tax years 2004, 2005, and 2006 should have been computed not from the applicable date of May 29, 2009, but instead from an applicable date of April 3, 2011, *i.e.*, thirty days after March 4, 2011, the date the IRS issued the Letter 950 and additional computational documents showing the effect of the 2004-2006 Partnership settlements. *Id.*

On July 15, 2013, the IRS denied GMI's refund claims. (Appx51.) Within six months of that denial, on January 30, 2014, GMI brought the instant refund suit in the Court of Federal Claims. (Appx42.)

E. Proceedings in the Court of Federal Claims

In its complaint, GMI challenged the computation of interest on the corporate underpayments attributable to the application of the Partnership settlements to GMI's returns. The United States noted in its Answer that GMI had not filed its refund claims within the six-month limitations period set forth in former § 6230(c)(2)(A) (Appx114), and soon moved to dismiss the action for lack of jurisdiction. (Appx128.) GMI responded that its refund claims were governed by, and timely filed under, the two-year period of limitations in I.R.C. § 6511(a). (Appx594.)

The Court of Federal Claims agreed with the United States. First, the court rejected GMI's argument that its claims were not described in former § 6230(c)(1)(A)(ii), which provided (as relevant here) that "[a] partner may file a claim for refund on the grounds that . . . the Secretary erroneously computed any computational adjustment . . . necessary to apply to the partner a settlement." 26 U.S.C.

§ 6230(c)(1)(A)(ii) (2012). (Appx14-19.) The court began by holding that the LCU interest at issue was a "computational adjustment," citing Treas. Reg. (26 C.F.R.) § 301.6231(a)(6)-1(b) (a "computational adjustment includes any interest due with respect to any underpayment . . . of tax attributable to adjustments to reflect properly the treatment of partnership items"). (Appx14-15.) Next, the court held that LCU interest is not a computational adjustment described in § 6230(a)(2)(A)(i) – which would subject it to the deficiency procedures, and therefore remove it from the ambit of § 6230(c)(1)(A) – because, by definition, interest is not a component of a "deficiency." (Appx15-18.)

The court then held that GMI's allegation that the IRS had used an incorrect "applicable date" in computing LCU interest was an allegation that the IRS had "erroneously computed" a computational adjustment, *i.e.*, LCU interest. (Appx18.) Following the reasoning of the Seventh Circuit in *Acute Care Specialists II v. United States*, 727 F.3d 802, 813 (7th Cir. 2013), the court found that GMI's claim "that the IRS used an incorrect variable" in its interest computation is "a complaint that the IRS erroneously computed the amount" of interest due. *Id.*

Finally, the court held that the computation of LCU interest here was "necessary to apply to the partner a settlement" within the meaning of former § 6230(c)(1)(A)(ii). (Appx18-19.) The court rejected GMI's argument that the interest issue itself would have to have been settled in order for § 6230(c)(1)(A)(ii) to apply. (Appx19.) Because the Partnership settlements resulted in underpayments of tax, and because underpayments of tax are subject to statutory interest, the computation of that interest – which, again, falls within the definition of "computational adjustment" – was necessary to apply the Partnership settlements to GMI's returns. *Id.*

Having concluded that former § 6230(c) applied to GMI's claims, the court then rejected GMI's argument that the IRS failed to send a sufficient notice of computational adjustment with respect to the LCU interest that would trigger the running of the six-month period to file a refund claim in § 6230(c)(2)(A). (Appx19-25.) The court noted that the statute "does not require a particular title for the furnished notice, nor does it specify what must be included in the notice." (Appx23.) Accordingly, the court looked to "the factual circumstances in this case" to "decide the issue of notice sufficiency." (Appx23.) Ultimately, the

court concluded that the detailed interest computations that the IRS provided to GMI on April 18 and 20, 2011 (for 2002 and 2003) and June 14, 2011 (for 2004-2006) made GMI "well aware of the IRS's computation of its LCU interest and the interest accrual dates the IRS had used." (Appx23.) Because GMI thereby "had effective notice – in writing – of its calculated LCU interest," the court found GMI's "technical arguments about the insufficiency of the notices it received unavailing." (Appx24.)

Turning to GMI's argument that its claims were timely filed within the two-year general limitations period of I.R.C. § 6511(a), the court held that this broad provision had, in this context, been preempted by the after-enacted, more specific provisions of former § 6230(c). (Appx25-27.) Relying primarily on *EC Term of Years Trust v. United States*, 550 U.S. 429 (2007), the court held that, because § 6230(c) provided a mechanism for taxpayers to file specific claims such as those raised by GMI, its shorter limitations period governed the timing of GMI's refund claims here. (Appx27.)

Without expressly deciding whether GMI's refund claims were "attributable to partnership items,"[5] the court rejected GMI's argument that the six-month limitations period in former § 6230(c) was limited to such claims. (Appx27.) The court noted that, although former §§ 6511(g) and 7422(h) – two of the provisions relied upon by GMI in this regard – "make clear that claims attributable to partnership items are governed by section 6230(c)," "[n]either . . . indicate[s] that refunds attributable to partnership items are the *only* instances in which section 6230(c) applies." (Appx29, Appx27 (emphasis in original).)

Finally, the court gave short shrift to GMI's suggestion that failure to adopt its reading of the statutory scheme might encourage abusive behavior by the IRS, remarking that "[p]olicy arguments for a different scheme are best directed to Congress, not the court." (Appx30.)

Accordingly, the court held that it lacked jurisdiction over GMI's claims for refund of LCU interest, and it granted the United States'

[5] The court did observe that the LCU interest at issue here was "assessed as a result of" underpayments of tax attributable to partnership items. (Appx29.)

motion to dismiss those claims for lack of jurisdiction. (Appx30.) GMI now appeals.

SUMMARY OF ARGUMENT

The Court of Federal Claims correctly dismissed GMI's claims for refund of large corporate underpayment (LCU) interest for lack of jurisdiction. These claims challenge the amount of LCU interest determined by the IRS when it applied the Partnership settlements to GMI's consolidated returns. As the court correctly held, these claims dispute "computational adjustments" that were necessary to apply the settlements to the GMI Partners, and that GMI alleges were incorrectly computed by the IRS, as described in former § 6230(c)(1)(A)(ii) of the Internal Revenue Code. As such, these claims were required to be filed within the six-month period of limitations in former § 6230(c)(2)(A). Because GMI did not timely file its administrative refund claims within this six-month limitations period, the court lacked jurisdiction over the instant refund suit.

The Court of Federal Claims correctly held that the six-month limitations period began to run in April 2011 for the tax years 2002 and 2003, and in June 2011 for the tax years 2004, 2005, and 2006.

Regardless of any putative defects in earlier notices furnished to GMI, the notice of the computational adjustments provided to GMI was indisputably sufficient once those amounts had been finally determined, *i.e.*, after the end date for accrual of interest was established by GMI's payment of the underlying tax. GMI received interest computations in April and June of 2011 that clearly indicated the "applicable" (start) dates for LCU interest and the amounts of such interest that had accrued to date. GMI concedes on brief that the 2011 interest computations imparted information sufficient to provide it with fair notice of those computational adjustments. The court below correctly rejected GMI's "technical arguments about the insufficiency of the notices" it previously received from the IRS, because GMI had effective written notice of its calculated LCU interest by reason of these 2011 interest computations, which is all that former § 6230(c) required.

The court also correctly held that the timeliness provisions of I.R.C. § 6511(a) did not apply to GMI's refund claims. Contrary to GMI's argument, the provisions on which it relies – former Code sections 6230(d)(6), 6511(g), and 7422(h) – did not limit former § 6230(c) to refund claims that are attributable to partnership items. And to the

extent that this conclusion results in any statutory overlap, the court correctly held that the specific scheme for refund claims in former § 6230(c) supplants the more general scheme in I.R.C. § 6511(a). Even if former § 6230(c) were limited to refund claims that are "attributable to partnership items," GMI's claims fit the bill: they seek refunds of interest on underpayments of tax resulting from the application of settlements that dictate the treatment of partnership items.

The judgment of the Court of Federal Claims is correct and should be affirmed.

ARGUMENT

The Court of Federal Claims correctly dismissed GMI's claims for refund of large corporate underpayment interest for lack of jurisdiction, because GMI did not file its administrative refund claims within the applicable six-month period of limitations in former I.R.C. § 6230(c)(2)(A)

Standard of review

This Court reviews *de novo* the determination by the Court of Federal Claims that it lacked subject matter jurisdiction. *Wilson v. United States*, 405 F.3d 1002, 1008 (Fed. Cir. 2005). To the extent GMI contends that the court made erroneous findings of fact relating to the jurisdictional issue, those findings are reviewed for clear error. *See*

Rocovich v. United States, 933 F.2d 991, 993 (Fed. Cir. 1991). "A party seeking the exercise of jurisdiction in its favor has the burden of establishing that such jurisdiction exists." *Id*.

A. Introduction

While tax refund suits are subsumed within the general grant of jurisdiction to the Court of Federal Claims over "claim[s] against the United States founded . . . upon . . . any Act of Congress," 28 U.S.C. § 1491(a)(1),[6] the Internal Revenue Code contains additional jurisdictional conditions to such suits. For instance, I.R.C. § 7422(a) provides that no tax refund suit "shall be maintained in any court" until a refund claim "has been duly filed with the Secretary, according to the provisions of law in that regard." One of the "provisions of law in that regard" is I.R.C. § 6511(a), which sets forth the general rule that administrative refund claims must be filed within the later of three years from the time the return was filed or two years from the time the tax was paid. As in effect during the years at issue, however, § 6511(g)

[6] *See also* 28 U.S.C. § 1346(a)(1), granting district courts jurisdiction concurrent with that of the Court of Federal Claims over tax refund suits.

contained an exception for claims relating to income tax "attributable to any partnership item," specifying that, as relevant here, former § 6230(c) and (d) applied to such claims. 26 U.S.C. § 6511(g) (2012).[7]

As discussed above, former § 6230(c) provided special rules for certain partner-level refund claims associated with the TEFRA regime, including claims alleging that the IRS "erroneously computed" certain "computational adjustment[s]" resulting from the partnership proceeding. 26 U.S.C. § 6230(c)(1)(A) (2012). Among those special rules was § 6230(c)(2)(A), which provided that any claim under § 6230(c)(1)(A) "shall be filed within 6 months after the day on which the Secretary mails the notice of computational adjustment to the partner." Thus, if GMI's refund claims are described in § 6230(c)(1)(A), then the six-month statute of limitations under § 6230(c)(2)(A) applied to those claims by its terms.

[7] Like the TEFRA provisions applicable to this case, § 6511(g) was repealed by the Bipartisan Budget Act of 2015. *See* note 2, *supra*.

B. The Court of Federal Claims correctly held that GMI's refund claims are described in former § 6230(c)(1)(A)(ii)

As relevant here, former § 6230(c)(1)(A)(ii) provided that "[a] partner may file a claim for refund on the ground[ ] that . . . the Secretary *erroneously computed* any *computational adjustment* [that is] *necessary . . . to apply to the partner a settlement*." 26 U.S.C. § 6230(c)(1)(A)(ii) (2012) (emphasis added). GMI's refund claims satisfy all three portions of the statute italicized in the preceding sentence.

1. GMI's refund claims pertain to computational adjustments

As indicated above, a "computational adjustment" is simply "the change in the tax liability of a partner which properly reflects the treatment . . . of a partnership item." 26 U.S.C. § 6231(a)(6) (2012). Moreover, "[a] computational adjustment includes any interest due with respect to any underpayment . . . of tax attributable to adjustments to reflect properly the treatment of partnership items." Treas. Reg. § 301.6231(a)(6)-1(b); *see Olson v. United States*, 172 F.3d 1311, 1318 (Fed. Cir. 1999). Because GMI's refund claims seek to recover LCU interest on underpayments of tax resulting from the treatment of partnership items dictated by the Partnership settlements, those claims

indisputably pertain to computational adjustments, as the Court of Federal Claims correctly held.[8] (Appx15.)

The court also correctly held that interest is not the type of computational adjustment that is excluded from the purview of former § 6230(c)(1)(A) by dint of § 6230(a)(2). (Appx15-17.) Under the general rule of § 6230(a)(1), the deficiency procedures did not apply to the assessment of any computational adjustment, meaning that the IRS could summarily assess such amounts without having to afford the partner the opportunity to challenge the adjustment on a pre-assessment basis in the Tax Court. Under that rule, a partner could challenge a computational adjustment only by paying the amount of the adjustment and then initiating the refund process under § 6230(c).

As relevant here, however, former § 6230(a)(2) provided that the deficiency procedures *did* apply – meaning that the refund procedure for § 6230(c)(1)(A) adjustments did not apply – to any computational adjustment resulting in a deficiency if the adjustment involved an

[8] By the time Treas. Reg. § 301.6231(a)(6)-1(b) was finalized in 2001, the LCU interest provision had been part of the Internal Revenue Code for almost eleven years. *See* T.D. 8965, 2001-2 C.B. 344; Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-58, § 11341(a), 104 Stat. 1388, 1388-470.

"affected item" (other than penalties) that required substantive "partner level determinations." 26 U.S.C. § 6230(a)(2)(A)(i) (2012); *see Rodgers v. United States*, 843 F.3d 181, 193 n.71 (5th Cir. 2016) (referring to "substantive affected items").[9] The court correctly held, however, that interest is not a computational adjustment described in § 6230(a)(2)(A)(i), since it cannot give rise to a "deficiency." (Appx17.) *See* I.R.C. §§ 6211(a) (defining "deficiency" in terms of an amount of tax), 6601(e)(1) (providing that any reference to "tax" in the Code provisions relating to the deficiency procedures – which would include § 6211(a) – does not include interest on that tax); *Pen Coal Corp. v. Commissioner*, 107 T.C. 249 (1996) (no deficiency jurisdiction over LCU interest); *see also Field v. United States*, 381 F.3d 109, 113 (2d Cir. 2004) (§ 6230(a)(2)(A)(i) does not apply to assessment of interest at enhanced "tax-motivated" rate provided in 26 U.S.C. § 6621(c) (1988), as such interest is "exempt from deficiency proceedings altogether by

[9] An "affected item" is a tax item of a partner that is affected by a partnership item. *See* 26 U.S.C. § 6231(a)(5) (2012); Treas. Reg. § 301.6231(a)(5)-1 (providing examples).

virtue of section 6601(e)"); *Barlow v. Commissioner*, 301 F.3d 714, 722 (6th Cir. 2002) (same). [10]

2. GMI's refund claims allege that the IRS erroneously computed the computational adjustments

Having concluded that GMI's refund claims pertain to "computational adjustments" (LCU interest on underpayments of tax resulting from the treatment of partnership items dictated by the Partnership settlements), the Court of Federal Claims correctly held that those claims – which the court aptly characterized (Appx18) as alleging "that the IRS computed [GMI's] LCU interest using the wrong start date" – fall squarely within the category of claims alleging that the IRS "erroneously computed" any computational adjustment. 26 U.S.C.

[10] In *Irvine v. United States*, 729 F.3d 455, 464-465 (5th Cir. 2013), the Fifth Circuit held that, under the facts of that case, the assessment of "tax-motivated" interest against the partners pursuant to 26 U.S.C. § 6621(c) (1988) was subject to the normal deficiency procedures pursuant to former § 6230(a)(2)(A)(i), and that the six-month period of limitations applicable to refund claims involving § 6230(c)(1)(A) computational adjustments therefore did not apply. The government's brief, however, did not inform the court that, by definition, interest cannot give rise to a "deficiency" (and that the assessment of interest therefore cannot be subject to the deficiency procedures). Presumably, that is why GMI did not cite *Irvine* in either its Court of Federal Claims brief or its opening brief on appeal.

§ 6230(c)(1)(A) (2012). As the court explained (Appx18), GMI's argument that the term "erroneously computed" connotes solely mathematical errors is belied by the statute itself, which distinguishes between mathematical errors and erroneous computations. *See* 26 U.S.C. § 6230(b), (c) (2012); *see also Acute Care Specialists*, 727 F.3d at 813 ("The taxpayers' argument that the phrase 'erroneously computed any computational adjustment' only refers to 'mathematical mistake[s],' which are distinguishable from 'substantive issues,' does not find support in statutory or case law.").

GMI's assertion on appeal that the alleged error in the amount of LCU interest assessed by the IRS "is not computational," Br. 45, does not square with the repeated reference in its complaint to an alleged "miscalculat[ion]" on the part of the IRS. (Appx53, Appx56, Appx58, Appx61, Appx63.) As a practical matter, every computation of interest on an agreed partner-level underpayment of tax resulting from a partnership proceeding has three inputs – a start date, an end date, and a rate at which the interest is computed. A challenge to one or more of those inputs by the underpaying partner necessarily entails an allegation that the IRS "erroneously computed" the interest, 26 U.S.C.

§ 6230(c)(1)(A) (2012), regardless of the basis for challenging the input(s). Accordingly, the Court of Federal Claims correctly found that GMI's "claim that the IRS used an incorrect variable in its LCU interest computation" was "a complaint that the IRS erroneously computed the amount of LCU interest." (Appx18.)

3. The computational adjustments that are the subject of GMI's refund claims were necessary to apply the Partnership settlements to the GMI Partners

Finally, the Court of Federal Claims correctly held that the computation and assessment of LCU interest on the GMI Partners' underpayments of tax resulting from the Partnership settlements was necessary to apply those settlements to the partners. (Appx19.) GMI's argument to the contrary is based on the erroneous premise that the computation and assessment of underpayment interest in this context cannot be "necessary . . . to apply to the partner a settlement," 26 U.S.C. § 6230(c)(1)(A)(ii) (2012), unless such computation was itself covered by the settlement. But settlement-related computational adjustments are not themselves the subject of the settlement agreement; rather, they are the adjustments to the partners' respective tax liabilities – including interest, *see* I.R.C. § 6601(e)(1) – resulting

from the treatment of partnership items as dictated by the settlement agreement. *See* 26 U.S.C. § 6231(a)(6) (2012). As applied to settlement-related computational adjustments that are not subject to the deficiency procedures (like underpayment interest, *see* Part B.1. of the Argument, *supra*), that is simply another way of saying that such adjustments are the adjustments to the partners' respective tax liabilities that are "necessary . . . to apply to the partner[s] [the] settlement." 26 C.F.R. U.S.C. § 6230(c)(1)(A)(ii) (2012).

Under GMI's contrary view, former § 6230(c)(1)(A)(ii) would exclude even settlement-related computational adjustments that relate solely to the tax (*i.e.*, non-interest) portions of the partners' respective tax liabilities, since those adjustments are not themselves covered by the settlement agreement (they *result* from the *partnership items* covered by the settlement agreement). In other words, under GMI's interpretation of the statute, a settlement-related computational adjustment could *never* be "necessary . . . to apply to the partner a settlement" under § 6230(c)(1)(A)(ii). That anomalous result confirms

that the Court of Federal Claims correctly rejected GMI's argument on this point.[11]

Based on the foregoing, the Court of Federal Claims correctly held that GMI's refund claims are described in former § 6230(c)(1)(A)(ii).

C. The Court of Federal Claims correctly held that the six-month limitations period in former § 6230(c)(2)(A) began to run in April 2011 for GMI's 2002-2003 tax years and in June 2011 for GMI's 2004-2006 tax years

As indicated above, former § 6230(c)(2)(A) provided that any claim for refund under § 6230(c)(1)(A) "shall be filed within 6 months after the day on which the Secretary mails the notice of computational adjustment to the partner." 26 U.S.C. § 6230(c)(2)(A) (2012). Noting that the statute "does not require a particular title for the furnished notice, nor does it specify what must be included in the notice," the

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[11] GMI notes (Br. 46) that settled partnership items convert to nonpartnership items pursuant to former § 6231(b)(1)(C), but it fails to explain how that rule supports its argument that underpayment interest is not a computational adjustment "necessary . . . to apply to the partner a settlement" unless its computation was itself covered by the settlement. And GMI's assertion (*id.* at 47) that "no TEFRA provision, including section 6230(c), has any further application to unsettled items that are not computational" does not help its case, as underpayment interest is computational. *See* Part B.2. of the Argument, *supra*.

Court of Federal Claims correctly held that GMI "had effective notice – in writing – of its calculated LCU interest" by reason of the interest computations that the IRS mailed to GMI in April and June of 2011. (Appx23, 24.) *See Acute Care Specialists*, 727 F.3d at 813 (holding that the six-month statute of limitations in § 6230(c)(2)(A) began to run upon the IRS's mailing of Form 4549A to the partners, even though the form did not state that it was a notice of computational adjustment).

GMI's reliance on *McGann v. United States*, 76 Fed. Cl. 745, 758-61 (2007), in support of its argument that none of the documents it received from the IRS qualified as a notice of computational adjustment (Br. 49-50) is misplaced. In *McGann,* the Form 4549A provided by the IRS stated that interest would be computed at the enhanced "tax-motivated" rate, but did not include a computation of that interest and showed "0.00" as the amount of tax-motivated interest. *Id*. at 759. The court concluded that this statement was misleading and that, accordingly, the six-month period for refund claims under former § 6230(c)(2)(A) never began to run. *Id*. at 761.

The Court of Federal Claims here distinguished *McGann* on the ground that GMI was not misled. (Appx24.) Indeed, it is difficult to

fathom how GMI could have been misled by the 2011 interest computations, which indicated precisely when LCU interest began to accrue for each year and the amounts of LCU interest that had accrued to date. (Appx338, 344, 560, 562, 563.) In any event, subsequent appellate decisions have rejected similar arguments that documents provided by the IRS did not qualify as notices of computational adjustment and therefore did not trigger the six-month limitations period of § 6230(c)(2)(A). *See Acute Care Specialists*, 727 F.3d at 813; *Kercher v. United States*, 539 F. App'x 517, 524 (5th Cir. 2013); *see also Bush v. United States*, 717 F.3d 920, 924 n.4 (Fed. Cir. 2013) (not reaching the limitations issue, but calling into doubt the partners' assertion that "the Forms they received did not 'impart enough information to give [them] fair notice' of their [interest] obligations") (alteration added). Ultimately, as GMI itself acknowledges (Br. 49), "[t]he overarching principle in determining whether a notice of computational adjustment is sufficient is whether the mailed notice imparted information sufficient to provide the taxpayer with fair notice of the computational adjustment." The Court of Federal Claims

correctly held that the 2011 interest computations did exactly that. (Appx24.)

GMI's arguments that the Court of Federal Claims "erred in finding that a notice of computational adjustment can be a series of documents sent over time" (Br. 51 (heading)) and "erred in holding that a partner's payment of a disputed amount is effectively equivalent to the IRS mailing the notice of computational adjustment" (*id.* at 53 (heading)) are red herrings. "[A]ppellate courts 'review[ ] judgments, not statements in opinions.'" *SkyHawke Technologies, LLC v. Deca Int'l Corp.*, 828 F.3d 1373, 1377 (Fed. Cir. 2016) (quoting *California v. Rooney*, 483 U.S. 307, 311 (1987)) (alteration in original). Regardless what the Court of Federal Claims may have said regarding the matters alluded to by GMI, its judgment is correct because GMI "had effective notice – in writing – of its calculated LCU interest" by reason of the 2011 interest computations. (Appx24.)

GMI's disparagement of the court's analysis of the various documents provided by the IRS prior to the 2011 interest computations (Br. 55-60) – including Form 5278 for 2002-2003, and Letter 950 (30-day letter) and Form 4549-A for 2004-2006 – is similarly beside the point.

Regardless of the relative merits of those documents as vehicles for notifying GMI of the computational adjustments pertaining to LCU interest, the fact remains that GMI received interest computations in April and June of 2011 that clearly indicated the "applicable" (start) dates for LCU interest and the amounts of such interest that had accrued to date. (Appx338, Appx344, Appx560, Appx562, Appx563.)

Moreover, GMI's critique of the interest computations deals largely with the *cover letter* (Letter 3535) that accompanied each report. For instance, GMI complains that the letters "include the patently incorrect statement that the accompanying computations are 'required' to be provided by section 6631," which "is inapplicable on its face" (since that provision applies to individuals rather than corporations). Br. 56, 57; *see also id*. at 59. That is true but irrelevant. It further complains (*id*. at 57) that the letters "do not show an amount required to be paid," but as GMI acknowledges (*id*.), that is because "GMI had already paid the LCU interest." GMI also takes issue (*id*. at 59-60) with the fact that the letters "plainly state that they are provided for GMI's records." (They actually state (Appx334, Appx342, Appx559) that they are provided for GMI's "information.")

GMI even suggests (Br. 60) that the cover letters led it to believe that no refund claim was necessary to dispute the interest computations, since the letters "indicate that GMI need not take or consider any action in response" and "explain that the [IRS] Service Center will independently decide whether interest should be refunded." (They actually state (Appx334, Appx342, Appx559) that the IRS "will either send you a bill within the next few weeks or send you a statement of any refund.") But GMI knows full well that the letters were simply conveying that, to the extent the report showed a discrepancy between interest "as computed" and interest "per transcript" (Appx338, Appx344, Appx561-563), the IRS would either send a bill or send a refund in the amount of the discrepancy (and did not require a refund claim to take the latter action). *See* note 3 & p. 11, *supra*; *see also* Br. 56 (correctly noting that the refund language in the letters "suggest[ed] that a refund" of any such discrepancy in GMI's favor would be "automatic").

GMI's only substantive complaint with respect to the interest computations is that they "do not discriminate between LCU interest incurred with respect to underpayments resulting from the Corporate

Proceedings and LCU interest resulting from the Partnership Proceedings." Br. 59; *see id.* at 57.[12] But GMI fails to explain how that circumstance would have prevented it from following up with the IRS in that regard – and from filing a claim under § 6230(c)(1)(A)(ii) – in the ensuing six months. At bottom, then, GMI's complaint is that "the IRS notices were not as neatly outlined as [GMI] desired." (Appx24.) The Court of Federal Claims did not err in finding these "technical arguments about the insufficiency of the notices . . . unavailing." (Appx24.)

Finally, GMI's averments of prejudice and potential due process violations (Br. 61-62) ring hollow in light of its status as a sophisticated and well-advised taxpayer. The 2011 interest computations "imparted information sufficient to provide [GMI] with fair notice of th[ose] computational adjustment[s]." Br. 49. As GMI acknowledges (*id.*), former § 6230(c) required nothing more.

[12] GMI complains (Br. 60) that the April 18, 2011 interest computations "indicated that 'LCU is off' with respect to GMI's 2004 and 2005 tax years." (Appx339, 341.) But the schedules for those years were superseded by the June 14, 2011 interest computations. (Appx560, 562.)

D. The Court of Federal Claims correctly held that I.R.C. § 6511(a) does not apply to GMI's refund claims

GMI asserts an additional, separate ground – *i.e.*, in addition to the grounds we have addressed in Part B. of the Argument, *supra* – in support of its argument that its refund claims are not described in former § 6230(c)(1)(A)(ii). According to GMI (Br. 31-42), (1) § 6230(c) is limited to refund claims that are "attributable to partnership items," and (2) its claims are not attributable to partnership items. GMI asserts that its refund claims are therefore subject to the generally applicable period of limitations for filing such administrative claims set forth in I.R.C. § 6511(a) (as relevant here, two years from the date the tax was paid). Because the Court of Federal Claims rejected GMI's argument regarding the scope of § 6230(c) (Appx25-27), it concluded that whether GMI's claims are "attributable to partnership items" is irrelevant (Appx27-29). The court correctly decided this issue, and, in any event, GMI's claims are attributable to partnership items.

1. The statutory provisions relied upon by GMI do not limit former § 6230(c) to refund claims that are attributable to partnership items

In support of its argument that former § 6230(c) is limited to refund claims that are attributable to partnership items, GMI points to

former §§ 6230(d)(6), 6511(g), and 7422(h). Section 6230(d)(6) provided that the portion of the Code containing the general rules relating to limitations on refund claims – which includes § 6511(a) – "shall not apply to any credit or refund of an overpayment attributable to a partnership item." 26 U.S.C. § 6230(d)(6) (2012). As relevant here, § 6511(g) similarly provided that, in the case of any income tax "which is attributable to a partnership item (as defined in section 6231(a)(3))," § 6230(c) and (d) "shall apply in lieu of" the general rules regarding limitations on refunds (which includes § 6511(a)). 26 U.S.C. § 6511(g) (2012). Finally, § 7422(h) provided in relevant part that "[n]o action may be brought for a refund attributable to partnership items (as defined in section 6231(a)(3)) except as provided in . . . section 6230(c)." 26 U.S.C. § 7422(h) (2012).

GMI reads these statutes as providing that "section 6230(c)'s 6-month limitations period applies *only* where the claim seeks a refund for tax attributable to a partnership item," and that "*[i]n all other circumstances*, the 2- or 3-year limitations period of section 6511(a) controls." Br. 31 (emphasis added). As the Court of Federal Claims correctly noted, however, that interpretation "is not consistent with a

careful reading of the statutes." (Appx27.) In particular, "[n]either section 7422(h) nor 6511(g) indicate[s] that refunds attributable to partnership items are the only instances in which section 6230(c) applies" (Appx27 (emphasis in original)); rather, they provide that *all* refund claims that are attributable to partnership items are governed by § 6230(c).[13]

GMI's argument that the court's interpretation of former §§ 6511(g) and 6230(d)(6) runs afoul of canons of statutory construction (Br. 37-38) is misconceived. According to GMI (*id*. at 37), the court's interpretation would render those provisions "superfluous" in that § 6230(c) "would already apply for all of the claims described in sections 6511(g) and 6230(d)(6) (those attributable to partnership items), as well as those which are not attributable to partnership items." That argument, however, assumes the answer to the question by positing that the purpose of §§ 6511(g) and 6230(d)(6) is to confine the universe of TEFRA-related refund claims to which § 6230(c) applies to those that

[13] Although GMI criticizes the court for "fail[ing] to analyze section 6230(d)(6) at all," Br. 38, the result is the same under that provision: it does not purport to *limit* § 6230(c) to refund claims that are attributable to partnership items.

are *directly* attributable to partnership items, *i.e.*, to the exclusion of those that are only indirectly attributable to partnership items. To the contrary, the purpose of §§ 6511(g) and 6230(d)(6) – as revealed by their plain language – is to establish that *all* refund claims that are attributable to partnership items are governed by § 6230(c).

GMI's reliance on the *expressio unius* canon (Br. 38) is likewise misplaced. As this Court recently stated:

> The force of any negative implication . . . depends on context. [The Supreme Court] ha[s] long held that the *expressio unius* canon does not apply unless it is fair to suppose that Congress considered the unnamed possibility and meant to say no to it, . . . and that the canon can be overcome by contrary indications that adopting a particular rule or statute was probably not meant to signal any exclusion.

United States Capitol Police v. Office of Compliance, 908 F.3d 748, 758 (Fed. Cir. 2018) (quoting *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 381 (2013)) (brackets added). Thus, GMI's reliance on the *expressio unius* canon is premised on the assumption that, in enacting §§ 6511(g) and 6230(d)(6), Congress probably meant to signal that TEFRA-related refund claims that are only indirectly attributable to partnership items

are excluded from the purview of § 6230(c). GMI fails to provide any support for that assumption.[14]

2. The Court of Federal Claims correctly held that, to the extent there is any overlap, the specific scheme for refund claims in former § 6230(c) supplants the more general scheme in I.R.C. § 6511(a)

The Supreme Court has held "[i]n a variety of contexts . . . that a precisely drawn, detailed statute pre-empts more general remedies." *EC Term of Years Trust v. United States*, 550 U.S. 429, 433 (2007), *quoting Brown v. GSA*, 425 U.S. 820, 834 (1976) (alterations added). "[I]t braces the preemption claim when resort to a general

[14] GMI erroneously asserts (Br. 33) that, "[i]f there were any doubt" regarding its interpretation, "it was erased by a 1997 amendment to section 6230(d)(6)" that "deleted the parenthetical reference to 'an affected item,' making it clear that section 6230(c) applies only to overpayments that are attributable to partnership items and does not apply to overpayments attributable to affected items," *i.e.*, does not apply to overpayments that are only indirectly attributable to partnership items. *See* note 9, *supra*. That amendment, however, was merely intended to confirm the Tax Court's overpayment jurisdiction in affected-item deficiency proceedings – jurisdiction that derives from the very subchapter B of chapter 66 that § 6230(d)(6) otherwise renders inapplicable. *See* I.R.C. § 6512(b)(1); 26 U.S.C. § 6512(b)(3) (2012) (penultimate sentence); *see also* H.R. Rep. No. 105-148, at 594, *reprinted in* 1997-4 C.B. (Vol. 1) 319, 916 (1997 amendments to §§ 6230(d)(6) and 6512(b)(3) were merely intended to "clarif[y] that the Tax Court has overpayment jurisdiction with respect to affected items").

remedy would effectively extend the limitations period for the specific one." *Id*. at 434. Where the Internal Revenue Code prescribes a strictly abbreviated period in which to challenge an IRS action, the Supreme Court has required taxpayers to comply with these specific and precisely-drawn provisions, particularly where recourse to the general provisions would circumvent or eliminate the shorter limitations period. *See EC Term of Years Trust*, 550 U.S. at 431-434 and n.2, 435-36 (specific scheme for challenging a wrongful levy set forth in I.R.C. § 7426(a)(1), with its nine-month period of limitations from pre-2017 I.R.C. § 6532(c)(1), pre-empted the general tax-refund jurisdiction of 28 U.S.C. § 1346(a)(1), with its two and three year periods of limitation set forth in I.R.C. § 6511(a); otherwise a taxpayer could "effortlessly evade" the more stringent nine-month limitations period that Congress intended for wrongful levy actions); *Hinck v. United States*, 550 U.S. 501, 507-08 (2007) (interest-abatement suits must be brought according to the specific scheme in I.R.C. § 6404(e)(1), within the 180-day limitations period in § 6404(h), and not under the general tax refund claim provisions of 28 U.S.C. §§ 1346(a)(1) and 1491(a)(1) and I.R.C. § 7422(a), which are governed by the 2-year limitations period of

§ 6532(a)(1); otherwise taxpayers could "effortlessly" evade these specific limitations by "disaggregating a statute Congress plainly envisioned as a package deal.")

Similarly, a partner may not circumvent TEFRA's specific, precisely-drawn scheme in I.R.C. § 6230(c) for challenging the computation of a computational adjustment by bringing the same challenge under the general refund claim provisions of I.R.C. §§ 7422(a) and 6511(a). To do so would allow taxpayers to "effortlessly evade" the more stringent six-month-from-notice period for filing a refund claim under former § 6230(c)(2)(A), which would be rendered meaningless if the taxpayer could file the same claim within the two-year-from-payment period under § 6511(a). The availability of such an end-run would frustrate Congressional intent that a partner be allowed only six months from receipt of a notice of computational adjustment to challenge the computation. *See* H.R. Conf. Rep. No. 97-760 at 607 (1982), *reprinted in* 1982-2 C.B. 600, 666. Congress explicitly provided that the six-month period would run from IRS action: the mailing of notice. The general two-year period, by contrast, commences upon the taxpayer's action: payment of the liability. If the general rule applied in

the TEFRA context, then a partner – and not the IRS – could initiate the period within which to file a refund claim simply by paying the directly assessed computational adjustment, perhaps years after the receipt of notice. This is not what Congress intended in enacting the six-month limitations period.

Rather, as in *EC Term of Years* and *Hinck*, Congress provided the exclusive method for a partner to assert its claim that the computation of enhanced interest was erroneous. That exclusive avenue to challenge a computational adjustment is former § 6230(c)(1)(A), which is governed by the six-month period in former § 6230(c)(2)(A). The two-year period in I.R.C. § 6511(a) thus does not apply to GMI's challenge to the computation of its liability for LCU interest.

Whether GMI's claims are "attributable to partnership items" is irrelevant to the applicability of former § 6230(c). What matters is whether its challenge to the computation of LCU interest is described in § 6230(c)(1)(A)(ii). As explained above, it is. Section 6230(c)(1)(A)(ii) and its six-month refund claim period are the exclusive avenue for GMI's challenge, because those provisions are part of a precisely drawn, detailed scheme for refund claims and suits contesting the application

to a partner of a partnership settlement, and that scheme pre-empts the default refund claim periods in I.R.C. § 6511(a).

3. In any event, GMI's refund claims are "attributable to partnership items"

GMI notes that, pursuant to former §§ 6230(d)(6) and 6511(g), Congress made an explicit exception to the general timing provisions of I.R.C. § 6511(a) for refund claims that are "attributable to partnership items," and directed instead that such refunds must be sought within the periods prescribed in § 6230(c). (Br. 31-34.) Together with former § 7422(h), these provisions make clear that a claim for a refund attributable to partnership items must satisfy the periods of limitation in § 6230(c), and cannot rely on the default two and three year periods of limitation in § 6511(a).

But GMI then posits that its refund claims are not, in fact, attributable to partnership items, such that those claims are instead governed by the general two-year period. (Br. 39-42.) As explained above, former §§ 6230(d)(6), 6511(g), and 7422(h) do not purport to *limit* § 6230(c) to refund claims that are attributable to partnership items. But even if they did, as GMI alleges, GMI's claims still would meet that standard.

To avoid that conclusion, GMI incorrectly attempts to divorce partner-level interest from the settled partnership items that gave rise to the underpayments of tax on which that interest is imposed. Obviously, such interest is determined at the partner (and not the partnership) level. But it is the settlement of partnership items that renders the partner liable for statutory interest on any underpayment resulting from the settlement. "A tax item is 'attributable to' a partnership item if it is 'due to, caused by, or generated by' a partnership item." *Bush*, 717 F.3d at 925 (*quoting Keener v. United States*, 551 F.3d 1358, 1365 (Fed. Cir. 2009)); *see also Schell v. United States*, 589 F.3d 1378, 1382 (Fed. Cir. 2009) ("This court has held that the applicability of § 7422(h) turns on whether the Taxpayers' refund claims are due to, caused by, or generated by a partnership item.") (internal quotation marks omitted).

The refund of LCU interest that GMI seeks is self-evidently due to, caused by, or generated by partnership items. The partnership items were originally reported on the Partnership's 2002-2006 partnership returns. The items were adjusted by settlements in a partnership level proceeding, and those adjustments, when applied to

GMI's consolidated corporate return, resulted in increases to taxable income and corresponding assessments of additional tax and interest. GMI paid the liabilities and now seeks a refund of the portion of interest assessed at the LCU rate. Therefore, under the plain language of former §§ 6230(d)(6), 6511(g), and 7422(h), GMI's present claim is for a refund of interest that was caused by – *i.e.* is attributable to – (settled) partnership items. Indeed, GMI has conceded as much in its refund claims.[15]

GMI attempts to muddy the waters by dissecting interest into component parts (*e.g.*, enhanced rate and applicable date) and attributing its refund claim to one or more of those parts. But no matter how far GMI seeks to distance its claims from the corresponding

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[15] *See, e.g.*, Appx570 (LCU interest was assessed and collected "on deficiencies that resulted from TEFRA examinations of a partnership"); Appx69 ("[GMI] . . . was assessed an increased rate of interest . . . on underpayments attributable to adjustments of partnership items"); Appx74, Appx83, Appx88, Appx93 (same).

Moreover, GMI characterizes the LCU interest at issue here as "an affected item because the interest applies to an underpayment resulting from adjustments to partnership items . . . ." (Appx582-583.) Affected items are, by definition, attributable to partnership items. *See, e.g., G-5 Inv. P'ship v. Commissioner*, 128 T.C. 186, 189 n.7 (2007) ("An "affected item" is any item whose existence or amount depends on any partnership item. Sec. 6231(a)(5).").

partnership items, the ineluctable conclusion remains that LCU interest is a computational adjustment that is attributable to partnership items. *See* Treas. Reg. § 301.6231(a)(6)-1(b) (2001) ("A computational adjustment includes any interest due with respect to any underpayment or overpayment of tax attributable to adjustments to reflect properly the treatment of partnership items."). Thus, GMI's refund claims are attributable to partnership items, and GMI may not rely on the two year limitations period in I.R.C. § 6511(a).

CONCLUSION

The judgment of the Court of Federal Claims should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Federal Circuit by using the appellate CM/ECF system on May 9, 2019.

/s/ Julie Ciamporcero Avetta
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FORM 19. Certificate of Compliance With Rule 32(a)

Form 19
Rev. 12/16

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

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(Name of Attorney)

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