No. 15-886

In the Supreme Court of the United States

ALBEMARLE CORPORATION & SUBSIDIARIES,
PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

The Internal Revenue Code provides a special ten-year statute of limitations for a taxpayer to seek a refund based on a credit for income taxes paid to a foreign government. 26 U.S.C. 6511(d)(3)(A). The question presented is as follows:

Whether, when an accrual-basis U.S. taxpayer has contested a foreign tax liability, the limitations period in Section 6511(d)(3)(A) for filing a claim seeking a refund based on a foreign tax credit runs from (i) the year in which the foreign tax originated or (ii) the year in which the foreign tax contest is resolved.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 11a-28a) is reported at 797 F.3d 1011.[1] The opinion of the court of appeals on denial of rehearing (Pet. App. 1a-8a) is reported at 805 F.3d 1060. The opinion of the Court of Federal Claims (Pet. App. 29a-124a) is reported at 118 Fed. Cl. 549.

JURISDICTION

The judgment of the court of appeals was entered on August 13, 2015. The court of appeals denied a petition for rehearing on October 22, 2015 (Pet. App. 1a-8a), and a petition for rehearing en banc on No-

[1] Because the footnotes in the court of appeals' opinion are misnumbered in the appendix to the certiorari petition, references to those footnotes in this brief will be to the version of the opinion published in the *Federal Reporter*.

vember 9, 2015 (Pet. App. 9a-10a). The petition for a writ of certiorari was filed on January 11, 2016. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Internal Revenue Code generally allows a credit against United States income tax for income taxes "paid or accrued during the taxable year" to a foreign country or U.S. possession. 26 U.S.C. 901(a) and (b)(1); see *Barclays Bank PLC* v. *Franchise Tax Bd.*, 512 U.S. 298, 306 n.5 (1994). Under 26 U.S.C. 902, the U.S. parent of a foreign subsidiary may claim an "indirect" or "deemed paid" credit for foreign income taxes paid by the subsidiary with respect to earnings distributed as a dividend taxable to the parent. *United States* v. *Goodyear Tire & Rubber Co.*, 493 U.S. 132, 135 (1989). Those credits, known as foreign tax credits, are designed to reduce the double taxation of foreign-source income earned by United States taxpayers. *Ibid.* A taxpayer who claims such a credit takes that credit "in the year in which the taxes of the foreign country * * * accrued." 26 U.S.C 905(a).

This case concerns the "special" limitations period that Congress has long provided for seeking U.S. tax refunds based on foreign tax credits. See 26 U.S.C. 6511(d)(3). Instead of the three-year period of limitation that generally applies to refund claims under 26 U.S.C. 6511(a), see *United States* v. *Clintwood Elkhorn Mining Co.*, 553 U.S. 1, 5 (2008), Section 6511(d)(3)(A) provides a ten-year period for taxpayers claiming credits for "taxes paid or accrued to [a] foreign country." 26 U.S.C. 6511(d)(3)(A). Prior to a 1997 amendment, that ten-year period ran "from the

date prescribed by law for filing the return for the year with respect to which the claim is made." 26 U.S.C. 6511(d)(3)(A) (1994). As amended, the limitations period runs "from the date prescribed by law for filing the return for the year in which [the foreign] taxes were actually paid or accrued." 26 U.S.C. 6511(d)(3)(A); see Taxpayer Relief Act of 1997, Pub. L. No. 105-34, § 1056(b), 111 Stat. 945.

2. From 1997 through October 2001, petitioner's Belgian subsidiary made interest payments on debentures that it had issued to petitioner and certain of petitioner's U.S. subsidiaries. Pet. App. 12a. The Belgian subsidiary did not withhold or remit Belgian withholding taxes on the interest payments, however, because it believed the payments to be tax-exempt. *Ibid.* In 2001, Belgian tax authorities issued a notice of adjustment to petitioner for the years 1996, 1997, and 1998. *Ibid.* The notice provided, in part, that "the debenture interest payments made between 1997 and 2001 were subject to Belgian withholding tax at the statutory rate of 25%." *Id.* at 12a-13a. Petitioner submitted a written protest objecting to the assessment of withholding tax. *Id.* at 13a.

In January 2002, petitioner and the Belgian tax authorities reached a settlement under which petitioner agreed to pay withholding tax at the rate of 15% on all interest paid from 1997 through 2001. Pet. App. 13a. In January and August 2002, petitioner made payments to the Belgian authorities that satisfied the total amount of the taxes due. *Ibid.*

Due to "an oversight on its part," however, petitioner did not seek credit for the Belgian taxes in the United States until seven years after the dispute was resolved. 797 F.3d 1011, 1019 n.4; see Pet. App. 115a-

116a. On May 15, 2009, petitioner filed an amended consolidated U.S. income tax return for the year 2002, which the Internal Revenue Service (IRS) agreed to treat as a refund claim for the relevant years. Pet. App. 13a. For the years 1997 and 1998, petitioner claimed refunds totaling $825,846 attributable to the withholding taxes it had paid pursuant to the agreement with the Belgian tax authorities. *Ibid.* The IRS disallowed those claims, determining that they were barred by the ten-year statute of limitations in 26 U.S.C. 6511(d)(3)(A).[2] The IRS asserted that the limitations periods had expired on March 15, 2008, and March 15, 2009, ten years after the respective due dates of petitioner's tax returns for those years. Pet. App. 13a.

3. Petitioner brought this suit for refund in the United States Court of Federal Claims (CFC). Petitioner contended that its administrative claims for refund for 1997 and 1998 were timely because, in its view, the limitations period in Section 6511(d)(3)(A) had not begin to run until the due date of its tax return for 2002, the year in which petitioner resolved its tax contest with Belgium. Pet. App. 34a, 76a-77a.

The government moved to dismiss for lack of subject matter jurisdiction, contending that petitioner's administrative claims for refund were untimely. The government agreed with petitioner that, under the "relation back" doctrine, foreign taxes are considered to accrue, and consequently are allowed as a credit under 26 U.S.C. 901(b), in the year to which the foreign taxes relate. The government maintained, however, that the statute of limitations for filing a refund

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[2] The IRS allowed petitioner's refund claims for the years 1999, 2000, and 2001. Pet. App. 13a.

claim under Section 6511(d)(3)(A) runs from the due date of the return for that year, rather than from the due date of the return for the year in which a foreign tax contest is resolved, and that petitioner's claims therefore were time-barred. Pet. App. 34a-35a, 77a.

The CFC dismissed the case for lack of subject matter jurisdiction, concluding that petitioner's claims for refund were untimely. Pet. App. 29a-124a. The CFC first addressed petitioner's claim for the year 1998, which was subject to the amended statute that requires a taxpayer to file its refund claim within ten years from the due date of "the return for the year in which such taxes were actually paid or accrued." *Id.* at 95a (quoting 26 U.S.C. 6511(d)(3)(A)). The CFC observed that the starting point for the limitations period was "not clear from the face of the statute." *Ibid.* After analyzing the statutory context and the legislative history of the 1997 amendment, the CFC concluded that Congress had intended to clarify that the statute of limitations runs from the due date of the return for the year of origin of the foreign tax for which credit is sought. That same starting point, the CFC further concluded, applies in the case of a contested foreign tax, which is considered to accrue and is allowed as a credit in the year of origin under the relation-back doctrine. *Id.* at 101a, 111a-112a, 117a. Applying that rule, the CFC held that the limitations period ran from the due date of petitioner's 1998 return, the year in which the foreign taxes had accrued under the relation-back rule, and that the claim was untimely because petitioner had filed it more than ten years after that date. *Id.* at 117a.

The CFC reached the same conclusion for petitioner's 1997 refund claim. Pet. App. 117a-124a. The

CFC determined that the pre-amendment version of Section 6511(d)(3)(A) governed that claim because the amended version applied only to taxes that "accrued in taxable years" beginning after the 1997 date of enactment, and the taxes at issue had accrued during petitioner's 1997 tax year under the relation-back doctrine. *Id.* at 119a-121a (citation omitted). The CFC concluded that petitioner's claim was untimely under the pre-amendment version because it was not filed within ten years from the due date of "the return for the year with respect to which the claim is made." *Id.* at 121a-122a (quoting 26 U.S.C. 6511(d)(3)(A) (1994)). The court further explained that the result would be the same under the amended version of the statute. *Id.* at 122a-124a.

4. The court of appeals affirmed. Pet. App. 11a-28a.

a. Like the CFC, the court of appeals analyzed separately petitioner's claims for the 1997 and 1998 tax years. Pet. App. 14a. The court began its analysis of the 1998 tax year by observing that "[i]t [wa]s undisputed that for purposes of sections 901 and 905, [petitioner's] contested foreign taxes 'accrued' in 1998, the year of origin of the tax liability." *Id.* at 16a. Because petitioner had filed its refund claim more than ten years after the due date for its 1998 tax return, *id.* at 15a, petitioner's claim could be timely only if the word "accrued" has a different meaning in Section 6511(d)(3)(A) than in Sections 901 and 905.

Petitioner "argue[d] that the use of the term 'actually' in section 6[5]11(d)(3)(A) requires that the year of accrual for limitations purposes be determined differently from the way it is determined for purposes of sections 901 and 905." Pet. App. 16a. To assess

whether that inference was warranted, the court of appeals examined the legislative history of the 1997 amendment to Section 6511(d)(3)(A), agreeing with the CFC that Congress had amended the statute to overrule the decision in *Ampex Corp.* v. *United States*, 620 F.3d 853 (Ct. Cl. 1980). Pet. App. 17a-19a. The court explained that, in *Ampex*, the Court of Claims had addressed the limitations period applicable when excess tax credits are "carried over" to a different year under 26 U.S.C. 904, and that the *Ampex* court had held that the period runs from the year to which the credits are carried, rather than from the year of origin. Pet. App. 18a-19a. The court of appeals determined that "[n]othing in the background of" the amendment—"which was directed solely at correcting a court decision governing carryover foreign taxes"—suggested that Congress had intended "to change the longstanding rule under which" "[t]he 10-year limitations period for a contested foreign tax [is] determined with reference to the year of origin." *Id.* at 19a-20a. A year-of-origin accrual point found further support, the court added, in Treasury Regulations that use the phrase "actually . . . accrued." *Id.* at 20a (citing 26 C.F.R. 1.904-2(c)(1)).

Petitioner contended that the accrual date was dictated by the "contested tax" doctrine set forth in *Dixie Pine Products Co.* v. *Commissioner*, 320 U.S. 516 (1944), under which an accrual-basis taxpayer may deduct a contested item only in the year when the dispute is resolved. The court of appeals rejected that argument. Pet. App. 22a-24a. The court explained that "the contested tax doctrine, which is derived from the law regarding deductions, is not strictly applicable to claims of foreign tax credits." *Id.* at 24a. The court

observed that contested foreign tax credits instead are "governed by the so-called 'relation back' doctrine," under which a credit for a contested foreign tax is allowable in the year of origin, even when the dispute is not resolved until a later taxable year. *Ibid.* The court also viewed petitioner's interpretation as "inconsistent with the purpose underlying * * * a special 10-year limitations period." *Id.* at 25a. The court found it "evident that the much longer period for filing foreign tax claims was intended to take account of the time needed to resolve foreign tax liability," not "simply to enable a taxpayer to complete the filing process following the resolution of its foreign tax liability." *Id.* at 26a.

b. The court of appeals held that petitioner's claim for the year 1997 was also untimely. Pet. App. 27a-28a. The court determined that the 1997 claim was governed by the prior version of Section 6511(d)(3)(A). *Ibid.* The court explained that, because petitioner had claimed credits for the 1997 Belgian withholding taxes "to offset its U.S. tax liability for the 1997 tax year," 1997 was "the year with respect to which [the] claim [wa]s made" within the meaning of the version of Section 6511(d)(3)(A) then in effect. *Id.* at 28a (quoting 26 U.S.C. 6511(d)(3)(A) (1994)).

5. The court of appeals denied a petition for rehearing or rehearing en banc. Pet. App. 1a-10a. In an opinion accompanying the denial of panel rehearing, the court rejected petitioner's assertion that the panel's prior decision had "refused to apply the 'all events test' that is set forth in *Dixie Pine* and codified in [26 U.S.C.] 461." *Id.* at 4a. The court pointed out that its decision had explicitly acknowledged the applicability of "the all-events test[] to the contested foreign tax

situation" by explaining that the test applies for purposes of "'determining in what year the right to claim the credit arises.'" *Ibid.* (quoting portion of decision reprinted at Pet. App. 25a). But the court reiterated that, "[f]or the purpose of determining against which U.S. tax the foreign tax is to be credited, the contested tax doctrine does not apply, and the tax is held to have accrued in the taxable year to which the tax relates." *Ibid.* (internal quotation marks omitted).

ARGUMENT

The court of appeals correctly held that petitioner's refund claims were untimely under the special ten-year limitations period that governs claims for foreign tax credits. That holding—on a question "of first impression" in the courts of appeals, Pet. 25—does not conflict with any decision of this Court or of another court of appeals. Plenary review therefore is not warranted. Petitioner's alternative suggestion (Pet. 26) that the Court remand the case for further consideration of a 70-year-old decision is also meritless. The petition for a writ of certiorari should be denied.

1. The court of appeals correctly held that the ten-year limitations period under 26 U.S.C. 6511(d)(3)(A) ran from the due dates of the returns for petitioner's 1997 and 1998 tax years, the respective years of origin of the contested foreign taxes. Pet. App. 26a-28a.

a. In general, a taxpayer's treatment of the foreign tax credit follows its method of accounting. 26 C.F.R. 1.905-1(a). An accrual-basis taxpayer like petitioner therefore takes the credit in the year in which the foreign taxes accrue. 26 U.S.C. 901(b)(1), 905(a); 26 C.F.R. 1.905-1(a). The time of accrual, in turn, is generally determined under the "all events" test that was originally set forth in this Court's decisions, see

United States v. *General Dynamics Corp.*, 481 U.S. 239, 242-243 (1987), and that has since been formalized in a statute and regulations, see 26 U.S.C. 461(h); 26 C.F.R. 1.461-1(a)(2). Under that test, a tax accrues when all the events that establish the fact of liability have taken place and the amount is capable of being determined with reasonable accuracy. See *General Dynamics Corp.*, 481 U.S. at 243; *United States* v. *Anderson*, 269 U.S. 422, 424 (1926); 26 C.F.R. 1.461-1(a)(2).[3] When liability remains "contingent" because it has been "contested by the taxpayer," accrual does not occur under the all-events test until the tax contest has been resolved. *Dixie Pine Prods. Co.* v. *Commissioner*, 320 U.S. 516, 519 (1944).

For six decades, however, the all-events test (and its contested-tax corollary) have not been used to determine the time of accrual for purposes of the foreign tax credit. Instead, federal courts and the IRS have applied a different principle—the relation-back doctrine—to determine the accrual date of a contested foreign tax. See *Cuba R.R.* v. *United States*, 124 F. Supp. 182, 185 (S.D.N.Y. 1954); Rev. Rul. 58-55, 1958-1 C.B. 266. Under that doctrine, a taxpayer's right to claim a foreign tax credit does not arise (and in that sense "accrue") until its foreign tax dispute has been resolved and "the contested liability is finally determined." Rev. Rul. 58-55, 1958-1 C.B. 266. But once that determination has been made, it relates back to the foreign tax's year of origin, so that

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[3] Although the all-events test generally is satisfied only upon "economic performance" (*i.e.*, payment of an expense or tax), see 26 U.S.C. 461(h)(1), Treasury Regulations provide that this requirement does not apply to creditable foreign taxes. 26 C.F.R. 1.461-4(g)(6)(iii)(B); see 797 F.3d at 1017 n.3.

the foreign tax "accrues" for purposes of Section 901 in the year to which the tax relates.

As explained by the author of a leading treatise on the subject:

> For the purpose of determining in what year the right to claim the credit arises, the contested tax doctrine is applied. For the purpose of determining against which United States tax the foreign tax is to be credited, the contested tax doctrine does not apply and the contested tax is held to have accrued in the taxable year to which the tax relates.

Elisabeth A. Owens, *The Foreign Tax Credit* 328 (1961) (Owens) (internal quotation marks omitted). The relation-back doctrine thus furthers Congress's goal of mitigating double taxation by allowing the foreign "tax to be offset," on a dollar-for-dollar basis, "against the United States tax on the same annual income." *Ibid.*; see Rev. Rul. 58-55, 1958-1 C.B. at 267.

b. The court of appeals correctly applied the "relation back" doctrine in determining when the ten-year "special period of limitation" for filing 1997 and 1998 refund claims attributable to the foreign tax credit in 26 U.S.C. 6511(d)(3)(A) began to run. Prior to the 1997 amendment, Section 6511(d)(3)(A)'s starting point for refund claims based on contested foreign taxes had long "been determined with reference to the year of origin," Pet. App. 19a, the same year that establishes the accrual point for purposes of Section 901, *id.* at 16a. In claiming U.S. tax refunds for the years 1997 and 1998 based on the foreign taxes at issue here, petitioner recognized that those foreign taxes "accrued during" 1997 and 1998 for purposes of Section 901. See *ibid.* ("It is undisputed that for pur-

poses of sections 901 and 905, [petitioner's] contested foreign taxes 'accrued' in 1998, the year of origin of the tax liability."); see also *id.* at 4a-5a. Petitioner argues, however, that for purposes of Section 6511(d)(3)(A), the same foreign taxes "actually . . . accrued" in 2002, when the foreign tax contest was resolved. The Federal Circuit correctly rejected that contention, holding instead that the word "accrued" should be given the same meaning in both provisions. That holding was consistent with the settled understanding of how Section 6511(d)(3)(A) in its pre-1997 form applied to contested foreign taxes, and with the fact that current Section 6511(d)(3)(A) implements and expressly references Section 901.

As the court of appeals explained (Pet. App. 19a-20a), Congress amended Section 6511(d)(3)(A) not to upset settled practice, but to overrule the decision in *Ampex Corp.* v. *United States*, 620 F.2d 853 (Ct. Cl. 1980). In *Ampex*, the Court of Claims had addressed excess foreign tax credits that can be "carried over" to a preceding or succeeding tax year under 26 U.S.C. 904(c). The court held that the ten-year limitations period ran from the due date of the return for the year to which excess foreign tax credits were carried. *Ampex*, 620 F.2d at 861-862. Congress rejected that rule in favor of the IRS position (as announced in Rev. Rul. 84-125, 1984-2 C.B. 125) that Section 6511(d)(3)(A)'s limitations period should be determined "by reference to the year in which the foreign taxes were paid or accrued (and not the year to which the foreign tax credits are carried)." H.R. Conf. Rep. No. 220, 105th Cong., 1st Sess. 576-577 (1997); see H.R. Rep. No. 148, 105th Cong., 1st Sess. 553 (1997)

(same); S. Rep. No. 33, 105th Cong., 1st Sess. 180 (1997) (same).

Nothing about that "amendment suggests that Congress intended * * * to change the longstanding rule under which the special limitations period had been calculated for contested taxes." Pet. App. 20a. To the contrary, Congress's rejection of a rule under which the limitations period in carryover cases would have run from a variable year other than the year of origin suggests that Congress would not have prescribed similar variability for cases in which a foreign tax has been contested.[4] See Gov't C.A. Br. 49 (explaining that petitioner's "position creates multiple, floating limitations periods for refund claims in respect of foreign tax credits for the same tax year, depending" on the particular facts).

Petitioner asserts (Pet. 13-14) that application of the relation-back doctrine leads to unwarranted differences in the accrual rules governing foreign tax credits and deductions based on foreign taxes. There are, however, sound reasons to apply different accrual rules in those settings. See Gov't C.A. Br. 62. A foreign tax deduction simply reduces the amount of income that is subject to taxation at the relevant rate. Section 901's foreign tax credit, by contrast, operates to mitigate double taxation as a dollar-for-dollar offset

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[4] Petitioner identifies (Pet. 17-18) carryover credits under Section 904(c) as an example of a setting in which two separate accruals are relevant, one in the year of origin and a second "deemed" accrual in the carryover year. But the 1997 amendment to Section 6511(d)(3)(A) reflects Congress's view that, for statute-of-limitations purposes, only the year-of-origin accrual matters. That is no less true in the context of contested foreign taxes than it is for the carryover context that Congress specifically targeted in the 1997 amendment. See Pet. App. 19a-20a.

against the U.S. tax, making it essential to align the foreign tax amount with the U.S. taxes for the relevant year. *Ibid.* The relation-back doctrine ensures such alignment.

In any event, as petitioner recognized in the court of appeals (Pet. C.A. Br. 41-42), petitioner's own construction of Section 6511(d)(3)(A) would lead to results inconsistent with the statute's purposes. See Pet. App. 25a-26a. Congress enacted the special ten-year limitations period out of concern that taxpayers otherwise would be unable to seek a credit when foreign governments adjust tax liabilities outside the three-year period within which domestic taxpayers are required to file refund claims. *Ibid.* That problem would not arise, however, and the regular three-year period would be sufficient to protect taxpayers' interests, if (as petitioner contends) the limitations period did not begin to run until a foreign tax contest was resolved. Because the "much longer period for filing foreign tax claims" already accounts for "the time needed to resolve foreign tax liability," it is "highly unlikely that Congress" intended to extend the filing deadline still further by delaying the point at which the ten-year period begins to run. *Id.* at 26a.

c. Petitioner's refund claims for both 1997 and 1998 were untimely. For the year 1998, Section 6511(d)(3)(A) required petitioner to submit its claim within ten "years from the date prescribed by law for filing the return for the year in which [the foreign] taxes were actually * * * accrued." 26 U.S.C. 6511(d)(3)(A). Under the relation-back doctrine, although petitioner's Belgian tax contest was not resolved until 2002, its 1998 Belgian taxes "actually * * * accrued" in 1998, making March 15, 2009, the

expiration date for filing a refund claim based on those taxes. Pet. App. 27a. Because petitioner did not file its claim until May 15, 2009, that claim was untimely. *Ibid.*

For the year 1997, petitioner offers no argument that its claim is timely if, as both courts below determined (Pet. App. 27a-28a, 119a-121a), that claim is governed by the pre-amendment version of Section 6511(d)(3)(A).[5] Although petitioner briefly suggests (Br. 25) that the claim is subject to the post-amendment version of the statute, that would be true only if the term "accrued" in the amendment's effective-date provision (see Pet. App. 27a-28a) had a meaning different from the one it has for other purposes in the foreign-tax-credit context. See Gov't C.A. Br. 36-37. In any event, as the CFC explained, petitioner's refund claim for 1997 would be time-barred under the current version of Section 6511(d)(3)(A) as well. Petitioner's 1997 Belgian taxes, although contested until 2002, relate back to 1997; the deadline for filing a refund claim based on those taxes was March 15, 2008; and petitioner's May 2009 refund claim was filed well after that deadline. Pet. App. 122a-124a.

2. None of petitioner's contrary arguments warrants this Court's review.

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[5] The pre-amendment version of Section 6511(d)(3)(A) provided that the ten-year limitations period would run from the date "prescribed by law for filing the return for the year with respect to which the claim is made." 26 U.S.C. 6511(d)(3)(A) (1994). The year "with respect to which" petitioner made its refund claim based on the foreign tax credit was 1997. The limitations period for claiming a refund attributable to that credit therefore began to run in 1998, when the return for that year was due. Petitioner's claim, which was not filed until 2009, therefore was time-barred. Pet. App. 28a.

a. Petitioner principally contends (Pet. 13-15, 18-21) that the decision below conflicts with decisions of this Court and of two other courts of appeals. But petitioner elsewhere recognizes (Pet. 25) that what it calls "[t]he ultimate question here presented"—that is, the issue of when Section 6511(d)(3)(A)'s limitations period begins to run in the context of a contested foreign tax—is a question "of first impression that has been addressed thus far only" in the decision below. Cf. Ajay Gupta, *Filing for an FTC Refund: Has Albemarle Struck Out?*, 81 Tax Notes Int'l 299, 300 (2016) ("No other circuit has addressed when the section 6511(d)(3)(A) limitations period begins running."). For that reason alone, this Court's review is not warranted.

b. Contrary to petitioner's contention (Pet. i, 9-18, 25-26), the decision below does not conflict with this Court's decision in *Dixie Pine*, *supra*. In *Dixie Pine*, an accrual-basis taxpayer claimed a deduction for the amount of a state gasoline tax that it was then contesting in the state courts. 320 U.S. at 517-518. This Court held that the deduction was improper. *Id.* at 519. The Court explained that, under the "all events" test, the state tax did not accrue for purposes of the deduction statute at issue while the taxpayer's liability was still contingent and being contested, and that the taxpayer therefore could not take the deduction until the taxable year when its liability was finally resolved. *Ibid.* As petitioner acknowledges (Pet. 15 n.13), *Dixie Pine* addressed "only a claimed deduction" under the Revenue Act of 1936, ch. 690, 49 Stat. 1648. See 320 U.S. at 518-519. The Court had no occasion to address the foreign-tax-credit statutes—under which the relation-back doctrine has long been used to deter-

mine the time of accrual, Pet. App. 16a, 19a—much less the statute of limitations that Congress later enacted to govern such credits.

Petitioner argues (Pet. 6, 15, 25) that the court of appeals departed from *Dixie Pine* by failing to treat the point at which a foreign tax contest is resolved as a separate "accrual" under the tax laws. The court of appeals recognized, however, that the contested-tax doctrine of *Dixie Pine* applies "for the purpose of determining in what year the right to claim the credit arises." Pet. App. 25a. The court simply held that the relation-back doctrine, rather than the all-events test, is used to determine the year "against which * * * the foreign tax is to be credited." *Ibid*; see *id.* at 4a. That reasoning is fully consistent with *Dixie Pine*.

Petitioner asserts (Pet. 25) that the decision below conflicts with *Dixie Pine* on the "threshold question * * * whether [petitioner's] 1997 and 1998 taxes first 'accrued' when the [Belgian] contest ended in 2002." Petitioner's phrasing assumes that the "threshold question" has a single answer—*i.e.*, that a particular foreign tax must "accrue" on the same date for all legal purposes. Petitioner's own claims for refund, however, depend on the proposition that the foreign taxes at issue here "accrued" in 1997 and 1998 for purposes of Section 901, but "accrued" in 2002 for purposes of Section 6511(d)(3)(A). See pp. 11-12, *supra*; see also Pet. App. 4a-5a, 16a.

Petitioner therefore is in no position to dispute the general proposition that particular contested taxes can "accrue at two different times for two different purposes." Pet. App. 25a (quoting Owens 328). Petitioner's argument is simply that the term "accrued" in Section 6511(d)(3)(A) should be construed by refer-

ence to this Court's analysis in *Dixie Pine*, rather than in accordance with Congress's use of the term in Section 901. No court has adopted that reading of Section 6511(d)(3)(A), and the Court in *Dixie Pine* had no occasion to discuss the proper interpretation of current Section 6511(d)(3)(A) or its statutory antecedents.

c. Petitioner's reliance (Pet. 18-21) on *United States* v. *Campbell*, 351 F.2d 336 (2d Cir. 1965), cert. denied, 383 U.S. 907 (1966), and *United States* v. *Cruz*, 698 F.2d 1148 (11th Cir.), cert. denied, 464 U.S. 960 (1983), is also misplaced. In each of those cases, a criminal defendant raised a claim of foreign tax credit as a defense to his prosecution for tax evasion under 26 U.S.C. 7201. *Cruz*, 698 F.2d at 1149-1151; *Campbell*, 351 F.2d at 337-338. The court in *Campbell* did not mention the Section 6511(d)(3)(A) limitations period at all, and the court in *Cruz* made clear that the case did not involve a contested foreign tax. See 698 F.2d at 1151 ("In the instant case, Cruz did not contest his tax liability to the Dominican Republic."). Both courts expressly recognized, moreover, that the relation-back doctrine applies in determining the year in which contested foreign taxes accrue for purposes of the foreign tax credit. *Ibid.*; *Campbell*, 351 F.2d at 338. Indeed, the Federal Circuit in this case relied on *Campbell* and *Cruz* for that very proposition. Pet. App. 21a, 24a-25a.

d. Petitioner further contends (Pet. 24-25) that this Court's review is warranted because "having a clear and proper interpretation of the relevant statute of limitations for securing a U.S. tax refund is extremely important." But the decision below supplies the requisite clarity, confirming that the current version of

Section 6511(d)(3)(A) retains the longstanding (and administrable) rule that the limitations period runs from a foreign tax's year of origin. Pet. App. 19a, 21a. Even after the Belgian tax contest was resolved in 2002, petitioner had much more than the usual three years to file a timely refund claim, and it had "no good reason for the [seven-year] delay" in filing, *id.* at 115a, which "was the result of an oversight on its part," 797 F.3d at 1019 n.4; see *ibid.* (explaining that a "period of 10 years from the year of origin has proved sufficient to resolve foreign tax liability contests"). In the rare circumstance where a foreign tax contest is so protracted that it imperils the taxpayer's ability to seek a U.S. tax refund within the ten-year period allowed by Section 6511(d)(3)(A), the taxpayer may seek an extension from the IRS "or file a 'protective refund claim.'" *Ibid.*

3. Finally, there is no merit to petitioner's alternative suggestion (Pet. 26) that the Court grant certiorari, vacate the judgment, and remand for reconsideration (GVR). A GVR order is "potentially appropriate" "[w]here intervening developments * * * reveal a reasonable probability that the decision below rests upon a premise that the lower court would reject if given the opportunity for further consideration, and where it appears that such a redetermination may determine the ultimate outcome of the litigation." *Lawrence* v. *Chater*, 516 U.S. 163, 167 (1996) (per curiam). Petitioner identifies no "intervening" decision of this Court or other "development" that might cause the court of appeals to reevaluate its interpretation of Section 6511(d)(3)(A). Petitioner cites only the 70-year-old decision in *Dixie Pine*, a decision that the court of appeals addressed at length in its initial opin-

ion (Pet. App. 22a-25a) and again in denying rehearing (*id.* at 3a-4a). Petitioner's contention that the court below misapprehended the import of *Dixie Pine* provides no basis for a GVR order.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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