

No. 26-7 (L), 26-222 (XAP)

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

GWA, LLC,
MICHELE M. LANZONI, TAX MATTERS PARTNER,
Petitioners / Appellants / Cross-Appellees,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent / Appellee / Cross-Appellant.

On Appeal from the United States Tax Court
Docket No. 6981-19

**BRIEF OF AMICUS CURIAE AMERICAN COLLEGE OF TAX
COUNSEL IN SUPPORT OF PETITIONER-APPELLANTS AND
REVERSAL**

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April 20, 2026

CORPORATE DISCLOSURE STATEMENT

Amicus Curiae American College of Tax Counsel is a corporation incorporated in the State of Tennessee that is described in Internal Revenue Code section 501(c)(6). Pursuant to FED. R. APP. P. 26.1, the American College of Tax Counsel has no parent corporation and no publicly held corporation owns 10% or more of its stock.

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The American College of Tax Counsel (“College”) respectfully submits this brief as Amicus Curiae in support of Petitioners – Appellants GWA, LLC, Michele M. Lanzoni, Tax Matters Partner. Pursuant to FED. R. APP. P. 29(a)(2), this brief is filed with the consent of all parties.¹

INTEREST OF THE AMICUS

The College is a nonprofit professional association of tax lawyers in private practice, in law school teaching positions, and in government, who are recognized for their excellence in tax practice and for their substantial contributions and commitment to the profession. The purposes of the College are to:

1. Foster and recognize the excellence of its members and to elevate standards in the practice of the profession of tax law;
2. Stimulate development of skills and knowledge through participation in continuing legal education programs and seminars;
3. Provide additional mechanisms for input by tax professionals in the development of tax laws and policy; and

¹ Pursuant to FED. R. APP. P. 29(a)(4)(E), counsel for Amicus Curiae states that no counsel for a party authored this brief in whole or in part, and none of its Fellows, its counsel, or any person other than Amicus Curiae made a monetary contribution to fund the preparation or submission of this brief.

4. Facilitate scholarly discussion and examination of tax policy issues.

The College includes approximately 700 Fellows recognized for their outstanding reputations and contributions to the field of tax law and is governed by a Board of Regents consisting of one Regent from each federal judicial circuit, two Regents at large, the Officers of the College, and the last retiring President of the College. This brief is submitted by the College's Board of Regents and does not necessarily reflect the views of all members of the College, including those who are government employees.

This case involves an important issue concerning the appropriate scope and application of the change in accounting method ("CAM") rules. The CAM rules are a narrow exception to the three-year statute of limitations that generally applies. Statutes of limitation are an indispensable element of fairness and critical for practical tax administration. Taxpayers may be significantly prejudiced by lost or destroyed evidence, faded memories, and unavailable or deceased witnesses. Therefore, it is important that any exception to the statute of limitations for a CAM be limited to those situations that qualify as a CAM under the Internal Revenue Code (the "Code") and Treasury regulations.

The Tax Court’s decision expands application of the CAM rules beyond the Code and Treasury regulations in a manner that could sow considerable uncertainty in circumstances where the Internal Revenue Service (“IRS”) identifies an issue after the limitations period has expired for earlier impacted tax years. This expansion raises significant fairness issues for taxpayers because it could allow the IRS to use the CAM rules to make adjustments to years otherwise closed by the statute of limitations. The expansion could be particularly problematic for small and mid-size businesses and other taxpayers that lack the resources to challenge the IRS on the application of the complex and often nuanced CAM rules, resulting in the assessment and payment of significant taxes that should otherwise be time-barred.

The College takes no position on the substantive characterization of the instruments at issue in this case. On the narrow CAM issue, however, the College agrees with the Appellants that the Tax Court’s recast of GWA as owning the underlying securities (“Basket Securities”) rather than the barrier option contracts (the “Option Contracts”) is not a CAM and submits this brief to inform the Court of the adverse tax administration and policy implications of the Tax Court’s decision.

SUMMARY OF ARGUMENT

This case presents a flawed interpretation of the CAM rules that creates an unjustifiable exception to the statute of limitations on tax assessments.

Code section 446 requires taxpayers to use a consistent “method of accounting” to compute taxable income, and it allows the IRS to require a different method if the chosen one does not “clearly reflect income.” 26 U.S.C. § 446(a), (b). The CAM rules apply to a change in the overall method of accounting (for example, cash or accrual) and also to a change in accounting for a “material item.” 26 C.F.R. § 1.446-1(e)(2)(ii)(a). When a method change occurs, Code section 481 works as a “catch-up” rule and requires an adjustment (referred to as a “section 481 adjustment”) in the year of change (and sometimes, without duplication, for a period of years thereafter) so items of income or deduction are not duplicated or omitted solely because of the method change. In practical terms, this means the year of change may include a one-time increase or decrease to taxable income to square up past reporting under the new method.

Because the section 481 adjustment may involve an adjustment to income relating to years otherwise closed by the statute of limitations, the Code and Treasury regulations narrowly limit the circumstances when a section 481 adjustment may be made. Code section 481 requires an actual

change in the accounting method and then allows an adjustment to correct an omission or duplication of an item of income or deduction resulting “solely” from that change.

Here, GWA reported gains on the Option Contracts when the contracts were terminated, which is when the Option Contracts are treated as sold or exchanged. This is the Code section 1001 method (the “1001 method”), which requires taxpayers to recognize gain or loss “on the sale or exchange of property.” The Tax Court recast what GWA owned from Option Contracts to Basket Securities but continued to keep GWA on the 1001 method for the Basket Securities, thereby requiring GWA to recognize gain or loss when the securities are sold or exchanged. Thus, while the Tax Court’s recast changed the *asset* owned, it did not change GWA’s accounting method. GWA was on the 1001 method both before and after the recast.

GWA also omitted no income. GWA included all income on the Option Contracts in 2009 and 2010. This income equals the income that would have been included from 2003–2010 if GWA owned the Basket Securities (ignoring the \$537,855 impact of the section 754 election on lifetime income). Income moves from these open years to earlier closed years only because the Tax Court treats GWA as owning Basket Securities rather than the Option Contracts. The section 481 adjustment is not due “solely” to the omission or

duplication of items resulting from any CAM but results from the Tax Court's change in *what* GWA owns. Thus, under the plain language of Code section 481, there can be no section 481 adjustment.

The Tax Court's recast also does not qualify as a CAM under the Treasury regulations because there is no change in how GWA accounts for a "material item." The Treasury regulations limit the CAM rules to a circumstance where there is a change in the overall accounting method or a change in the accounting for a material item. A material item is "any item that involves the proper time for the inclusion of the item in income or the taking of a deduction." 26 C.F.R. § 1.446-1(e)(2)(ii)(a). A CAM requires a change in the "treatment" of an "item" of income or deduction. *Id.* Applying substance over form principles, the Tax Court changed the "items" of income and deduction from long-term capital gain on the termination of the Option Contracts to eleven different items of income or deduction that result from the ownership of Basket Securities. The Tax Court did not change the treatment of an item of income or deduction but changed the items themselves. That is not a CAM and therefore provides no grounds for a section 481 adjustment.

ARGUMENT

To prevent the duplication or omission of income or deductions, the CAM rules allow the IRS to make a section 481 adjustment when a taxpayer

changes its accounting method. 26 U.S.C. § 481(a). The section 481 adjustment may take into account the omission or duplication of income or deductions from a year that is otherwise closed by the statute of limitations. *See Graff Chevrolet Co. v. Campbell*, 343 F.2d 568, 572 (5th Cir. 1965). Thus, as the Tax Court in this case recognized, “[b]ecause section 481 might be said to deny taxpayers the repose otherwise granted by the period of limitations, we carefully examine each instance in which the Commissioner invokes section 481.” *GWA, LLC v. Comm’r*, T.C. Memo. 2025-34, at *116.

I. The CAM rules allow adjustments to be made for closed tax years and therefore must be narrowly construed to limit the circumvention of statutes of limitations.

The application of the CAM rules must be cabined to avoid creating a technical and nuanced path for the IRS to assess and collect taxes that should be barred by applicable statutes of limitations. The importance of adhering to statutes of limitations requires a narrow interpretation of any provision that would undermine the limitations period. As the Supreme Court has explained, “the cases in which ‘a statute of limitation may be suspended by causes not mentioned in the statute itself ... are very limited in character, and are to be admitted with great caution; otherwise the court would make the law instead of administering it.’” *Gabelli v. SEC*, 568 U.S. 442, 454 (2013) (quoting *Amy v. Watertown*, 130 U.S. 320, 324 (1889)).

Statutes of limitations are, by definition, restrictive. Generally, the IRS has three years to make a tax assessment. 26 U.S.C. § 6501(a). The Supreme Court has long recognized that statutes of limitations serve the interests of all parties by promoting finality, repose, and certainty. *Rothensies v. Elec. Storage Battery Co.*, 329 U.S. 296, 301 (1946). Delay can be highly prejudicial to taxpayers, who generally bear the burden of proof in tax disputes and who must often overcome lost or destroyed evidence, faded memories, and unavailable or deceased witnesses. *Id.* at 301 (“Congress has regarded it as ill-advised, to have an income tax system under which there never would come a day of final settlement and which required both the taxpayer and the Government to stand ready forever and a day to produce vouchers, prove events, establish values and recall details of all that goes into an income tax contest.”).

Absent extraordinary circumstances such as fraud or an unfiled tax return, see 26 U.S.C. § 6501(c)(1) and (3), all taxpayers should have some assurance that their potential liability does not remain open forever. Without a meaningful and narrowly construed limitations period, income tax administration becomes exceedingly burdensome. Taxpayers and the government alike would have to remain perpetually prepared for litigation,

despite stale facts and lost evidence. *See Elec. Storage Battery*, 329 U.S. at 301.

Consistent with these broader principles, any exception to the statute of limitations for the CAM rules must be limited to those circumstances in which there is in fact a CAM. Otherwise, the CAM rules create a potentially limitless exception to the statute of limitations, thereby denying taxpayers finality, repose, and certainty. The rules apply to all taxpayers, but the risk falls disproportionately on small and mid-size businesses and other taxpayers without the means to challenge the IRS on the complex and often nuanced application of the CAM rules.

II. Section 481 does not apply because there is no change in the taxpayer’s method of accounting and the adjustment is not “solely” due to any change in method of accounting.

If there is a CAM, a section 481 adjustment may be made “solely” to prevent amounts from being duplicated or omitted by reason of the change. 26 U.S.C. § 481(a)(2). *See Hyatt Hotels Corp. v. Comm’r*, T.C. Memo. 2023-122, at *33. Section 481 imposes two requirements before a section 481 adjustment may be made. First, there must be an actual change in the taxpayer’s accounting method. 26 U.S.C. § 481(a)(1). Second, a section 481 adjustment may be made only for an omission or duplication that results

“solely” from the CAM. 26 U.S.C. § 481(a)(2). Neither requirement is met here.

A. There is no change in method of accounting.

For a section 481 adjustment to be made in this case, there must actually be a change in GWA’s accounting method. 26 U.S.C. § 481(a). But GWA was on the same method both before and after the Tax Court’s recast, so its accounting method did not change. The only change was to the characterization of the assets that GWA was treated as owning, which the Tax Court found to be different from what GWA reported (a finding on which the College does not express a view).

GWA reported gain on the Option Contracts under the 1001 method, which requires taxpayers to recognize gain or loss “on the sale or exchange of property.” 26 U.S.C. § 1001(c). This 1001 method applies to all investments, including options. *See* Staff of J. Comm. on Tax’n, JCX-34-21, *Technical Explanation of the “Modernization of Derivatives Tax Act of 2021”* 5 (Aug. 5, 2021) (explaining that, for an option contract, “the amount of gain or loss is determined at the time of a subsequent recognition event (*e.g.*, when the option is exercised or sold)”). An option is treated as sold or exchanged when it is canceled, terminated or expires worthless. 26 U.S.C. § 1234A (flush language). Therefore, the Option Contracts were sold or exchanged when

they terminated in 2009 and 2010, and GWA recognized gain at that time under the 1001 method. *GWA*, T.C. Memo. 2025-34, at *117–18.

The Tax Court calls GWA’s method the “open transaction” method, but that is wrong for at least two reasons. First, the cases cited by the Tax Court make clear that this so-called “open transaction” method applies to the issuer of the option (like Deutsche Bank) in determining the tax treatment of option premiums—not the holder of the option, like GWA. *See, e.g., Fed. Home Loan Mortg. Corp. v. Comm’r*, 125 T.C. 248, 267 (2005) (recipient of the option premium (issuer) not required to recognize income upon receipt of the payment); Rev. Rul. 58-234, 1958-1 C.B. 279, 283–84 (same). Second, the Tax Court never explains how its so-called “open transaction” method and the 1001 method are different methods. Before termination of the Option Contracts in 2009 and 2010, there was no sale or exchange of the Option Contracts. Under the 1001 method, GWA did not recognize any gain until termination of the Option Contracts in 2009 and 2010. Under the Tax Court’s “open transaction” method, GWA similarly would not recognize any gain from the Option Contracts (if, in substance, the subject instruments were Option Contracts) until termination in 2009 and 2010, which is no different than the 1001 method.

The Tax Court next concludes that GWA must apply “the section 1001 method” to what it characterized as Basket Securities. *GWA*, T.C. Memo. 2025-34, at *120. But this is the same method GWA always applied—just to the Option Contracts rather than the Basket Securities. This underscores the “change” at issue, which was a recast of the assets that GWA is treated as owning, not the method of accounting for those assets.

Allowing the IRS to make a section 481 adjustment when the taxpayer’s method of accounting has not changed has significant implications for tax law beyond this case. The IRS would be able to use a section 481 adjustment to reach back to closed years any time it recasts what the taxpayer owns. For example, the IRS could recast a trader owning an index fund as owning the underlying stocks—allowing the IRS to make a section 481 adjustment for earlier years when the indexed stocks were sold. This result would deny taxpayers the finality promised by the statute of limitations, and it demonstrates the Tax Court decision’s novel and far-reaching impact.

B. A section 481 adjustment is improper because there is no omission or duplication “solely” due to any change in method of accounting.

The second requirement for section 481 to apply, once a CAM is found, is a determination that amounts are duplicated or omitted “solely by reason of the change” in accounting method. 26 U.S.C. § 481(a)(2). As the Second

Circuit has explained, section 481 requires a taxpayer to make adjustments when the “adjustments ... are determined to be necessary solely by reason of [a] change [in accounting method] in order to prevent amounts from being duplicated or omitted.” *Cannon Corp. v. Comm’r*, 135 A.F.T.R.2d 662, 664 (2d Cir. 2025) (Summary Order); *see also Nat’l Life Ins. v. Comm’r*, 103 F.3d 5, 7 (2d Cir. 1996) (same).

Duplicated deductions or omitted income is essential for a section 481 adjustment for closed years to be permissible:

When a taxpayer uses an accounting method which reflects an expense before it is proper to do so or which defers an item of income that should be reported currently, he has not succeeded (and does not purport to have succeeded) in permanently avoiding the reporting of any income; he has impliedly promised to report that income at a later date, when his accounting method, improper though it may be, would require it. Section 481, therefore, does not hold the taxpayer to any income which he has any reason to believe he has avoided, and does not frustrate the policy that men should be able, after a certain time, to be confident that past wrongs are set at rest.

Graff Chevrolet, 343 F.2d at 572 (citing Note, *Problems Arising from Changes in Tax-Accounting Methods*, 73 HARV. L. REV. 1564, 1576 (1960)); *see also Peoples Bank & Tr. Co. v. Comm’r*, 415 F.2d 1341, 1344 (7th Cir. 1969) (same). Therefore, in addition to the plain language of section 481, the law allows a section 481 adjustment for closed years only when there is an omission of income that results *solely* from a CAM.

As a threshold matter, GWA did not omit any income here. The income reported by GWA in 2009 and 2010, when the Option Contracts terminated, equaled the income GWA would have reported over the life of the contracts if it had owned the Basket Securities (excluding—as the Tax Court did—the change in lifetime income of \$537,855 due to the section 754 election). *GWA*, T.C. Memo. 2025-34, at *118 (“These IRS adjustments do not change in any relevant way the ‘lifetime income’ that GWA derived from the [Option] Contracts.”). Therefore, a section 481 adjustment is not necessary “to prevent amounts from being duplicated or omitted” because GWA included all of the income when the Option Contracts terminated in 2009 and 2010 and paid tax at long-term capital gains rates at that time. *See* 26 U.S.C. § 481(a)(2).

The purported section 481 adjustment made in this case is in order to apply higher tax rates to the income that the Tax Court shifted to an earlier, closed year when it recast GWA as owning Basket Securities rather than the Option Contracts. The section 481 adjustment is not appropriate because there is no omission or duplication due “solely” to a CAM. *See* 26 U.S.C. § 481(a)(2). Nor does the erroneous section 481 adjustment pick up omitted income. Instead, it changes the tax rate on income already reported and taxed in open years. This type of correction is outside the scope of section 481, which looks only to whether income or expenses have been omitted or

duplicated—not whether the income was taxed at the correct rate. “Section 481 does not provide a means by which all errors of past years during which a different method of accounting was used may be corrected.” *Schuster’s Express, Inc. v. Comm’r*, 66 T.C. 588, 598 (1976). The “only goal of § 481 is to deal with the change in accounting practices;” section 481 “is not an excuse for the Commissioner to go rooting through old tax returns to find errors [made] in the past.” *Rankin v. Comm’r*, 138 F.3d 1286, 1290 (9th Cir. 1998).

If the IRS is allowed to use a section 481 adjustment when there has been no CAM such that any omission is not due “solely” to a CAM, section 481 adjustments could easily become a tool to circumvent the statute of limitations. When an adjustment falls outside the confines of section 481, the IRS should be held to statutes of limitations just as taxpayers are. In *Cannon Corp.*, the Second Circuit disallowed the taxpayer’s proposed section 481 adjustment that would have allowed the taxpayer to deduct a greater amount in the year of change. 135 A.F.T.R.2d at 665–66. The Court found the deduction barred by the statute of limitations because there was no CAM to warrant a section 481 adjustment. *Id.*

If the government benefits from a narrow interpretation of section 481, so should taxpayers. Statutes of limitation cut both ways, and limiting a section 481 adjustment to those circumstances that satisfy the plain language

of section 481 also protects the government from adjustments relating to closed years. It would be unfair to both the government and the taxpayer to require either “to stand ready forever and a day to produce vouchers, prove events, establish values and recall details of all that goes into an income tax contest.” *See Elec. Storage Battery*, 329 U.S. at 301.

III. There is no accounting method change because there is no change to a “material item.”

The Tax Court’s decision that there is a CAM is also contrary to the Treasury regulations that define a CAM. The Treasury regulations define a CAM as a change in the “overall method of accounting for gross income or deductions, or a change in the treatment of a material item.” 26 C.F.R. § 1.481-1(a)(1). A material item is “any item that involves the proper time for the inclusion of the item in income or the taking of a deduction.” *Id.* § 1.446-1(e)(2)(ii)(a). Therefore, when a case presents no overall method change, an accounting method change requires a change in the treatment of an “item” of income or deduction. *See id.*

But here, the change involves *what* GWA owns, applying substance over form principles, not a change in the “treatment” of an “item” of income or deduction. Of course, changing the asset owned changes the resulting items of income or deduction: in this case, the recast changes the items from long-term capital gain on the termination of the Option Contracts to short-term

capital gain, a section 734(b) adjustment, short rebates, bond interest expense, dividend expense, financing interest expense, management fees, transaction charges, ordinary dividends, bond interest income, and financing interest income. Order and Decision, *GWA, LLC v. Comm’r*, Dkt. No. 6981-19 (Oct. 7, 2025). That is, GWA no longer has one item of income or deduction but eleven. However, these are changes of “items” stemming from a recast, not changes in the “treatment” of “items.”

The Tax Court’s analysis underscores that a CAM must involve the same asset or item and then a change in the “treatment” thereof. As the Tax Court explains, “if the IRS recharacterizes an inventory item as a depreciable asset, the question is whether the adjustment will affect the taxpayer’s lifetime income *with respect to that asset*.” *GWA*, T.C. Memo. 2025-34, at *123 (emphasis in original). The Treasury regulations similarly provide that “a change in the treatment of *an asset* from nondepreciable or nonamortizable to depreciable or amortizable . . . is a change in method of accounting.” 26 C.F.R. § 1.446-1(e)(2)(ii)(d)(2), (e)(2)(ii)(d)(5)(iii) (emphasis added).

By contrast, here the Tax Court changed the asset from Option Contracts to Basket Securities, which changes the attendant items of income or deduction. There is no authority in the Treasury regulations or case law

that makes changing the asset the taxpayer owns a CAM. While changing the treatment of the *same asset* may be a CAM, changing the asset itself is not.

The Tax Court rejected GWA’s argument that the recast cannot be a CAM because, according to the Tax Court, a CAM “can be generated by the recharacterization of an asset, a transaction, or the income and deductions related thereto, provided that the change affects only timing.” *GWA*, T.C. Memo. 2025-34, at *120 n.52. But when the question is one “of characterization,” there is no CAM “because the determination of timing will automatically flow from the outcome of the character issue.” *Coulter Elecs. Inc. v. Comm’r*, T.C. Memo. 1990-186, 59 T.C.M. (CCH) 350, 365 (1990), *aff’d without op.*, 943 F.2d 1318 (11th Cir. 1991).

Further, none of the cases that the Tax Court cited involves application of substance over form principles to change the asset that the taxpayer is treated as owning, as here. For example, in *Diebold Inc. v. United States*, automated teller machines (“ATMs”) were recharacterized from nondepreciable to depreciable capital assets, but the underlying asset—ATMs—remained the same. 891 F.2d 1579, 1582–83 (Fed. Cir. 1989). Likewise, in *Pacific Enterprises v. Commissioner*, the court recharacterized the gas from working gas (used in operations) to cushion gas necessary to

maintain pressure in the reservoirs; but again, the underlying asset—gas—remained the same. 101 T.C. 1 (1993).

In the other cases cited by the Tax Court, the courts relabeled the existing item but did not create entirely new and different items. In *Humphrey, Farrington & McClain, P.C. v. Commissioner*, a law firm paid litigation expenses on behalf of its contingent fee clients. The Tax Court recharacterized these payments as loans, not ordinary and necessary business expenses. T.C. Memo. 2013-23, at *4. But the same “item” was involved—payments for litigation expenses. The question before the court was the proper method of accounting for these payments. *Id.* at *1, 9–11. Likewise, in *Sunoco, Inc. v. Commissioner*, the Tax Court considered whether strip mining overburden removal costs were production expenses or development costs, but the item—strip mining overburden removal costs—remained the same. T.C. Memo. 2004-29.

Cargill, Inc. v. United States, 91 F. Supp. 2d 1293, 1298 (D. Minn. 2000), and *Witte v. Commissioner*, 513 F.2d 391, 393 (D.C. Cir. 1975), involved the recharacterization of payments from rental payments to purchase payments. Again, the characterization involved the payments—the same item of expenditure and determining the correct accounting for that expenditure. *Cargill*, 91 F. Supp. 2d at 1298; *Witte*, 513 F.2d at 393; *see also Mingo v.*

Comm'r, 773 F.3d 629, 634–35 (5th Cir. 2014) (addressing payments on the sale of a partnership interest).

When in fact the “item” is different, courts have held that there is no CAM. For example, in *Berger v. Commissioner*, the Tax Court found that sales of mausoleum crypts and cemetery plots created different items of income for purposes of the CAM rules “[b]ecause sales of crypts significantly differed from sales of plots.” T.C. Memo. 1996-76, 71 T.C.M. (CCH) 2160, 2176 (1996).

As explained above, treating GWA as owning Basket Securities creates entirely new items of income and expense. The recast converts long-term capital gain into eleven different items of income or expense. Order and Decision, *GWA, LLC v. Comm'r*, Dkt. No. 6981-19 (Oct. 7, 2025). None of these items were on GWA’s original return when it reported gain or loss on the Option Contracts. *Id.* Because the recast of GWA owning Basket Securities results in completely different items, there is no CAM for an “item” but rather a change to the items themselves.

Notably, we are not aware of any cases where the IRS has argued, let alone a court has held, that there is a CAM when the court recharacterizes the asset owned and the items of income or loss are completely different as a result. Yet, the Tax Court’s opinion could easily open the door for such

challenges. Such a result is unsupported by the Treasury regulations and case law and cannot be used to circumvent the statute of limitations.

CONCLUSION

The importance of adhering to statutes of limitations requires a narrow interpretation of any provision that would undermine the limitations period. The cases in which a statute of limitation may be circumvented should be limited to those specified in section 481 and the Treasury regulations. If the IRS is allowed to use a section 481 adjustment when there has been no CAM and there is no omission or duplication “solely” due to a CAM, section 481 adjustments risk becoming a tool for the IRS to bypass the otherwise applicable statute of limitations to the detriment of a broad group of taxpayers.

The statute of limitation should not be circumvented in this case because GWA did not change its method of accounting, as section 481 requires. GWA reported the Option Contracts on the 1001 method, and the Tax Court put GWA on the same 1001 method for the Basket Securities. Because the Tax Court changed *what* GWA owns, there is no omission of income or duplicated deductions due “solely” to a CAM and section 481 does not apply. The purported section 481 adjustment resulting from the Tax Court’s decision changes the tax rate on income already reported and taxed in open years. This type of correction is outside the scope of section 481.

There also is no CAM under the Treasury regulations because there is no change to a material item. The Tax Court's recast results in completely different items of income or deduction. While the Tax Court is free to recast the transaction, the CAM rules provide no grounds for reaching back into closed years.

Dated: April 20, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on April 20, 2026, a true and correct copy of the foregoing was filed with the Clerk of Court using the CM/ECF system, which will send notice of electronic filing to all CM/ECF participants, resulting in service upon all counsel of record.

/s/ Lee Meyercord

Lee S. Meyercord

CERTIFICATE OF COMPLIANCE

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/s/ Lee Meyercord

Lee Meyercord