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Tenth Circuit

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UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

SEMINOLE NURSING HOME, INC.,

Petitioner - Appellant,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent - Appellee.

No. 20-9005

Appeal from the United States Tax Court
(CIR No. 24577-14 L)

David J. Looby, Conner & Winters, LLP, Oklahoma City, Oklahoma for the Petitioner-Appellant.

Kathleen E. Lyon, Attorney, Tax Division (Richard E. Zuckerman, Principal Deputy Assistant Attorney General and Michael J. Haungs, Attorney, Tax Division, with her on the brief), Department of Justice, Washington, D.C., for Respondent-Appellee.

Before **HARTZ**, **SEYMOUR**, and **MURPHY**, Circuit Judges.

HARTZ, Circuit Judge.

The Internal Revenue Service (IRS) may levy on the property of a taxpayer who fails to pay delinquent taxes after notice and demand. *See* 26 U.S.C. § 6331(a). But the Tax Code provides that the levy may be released on grounds of economic hardship. *See*

id. § 6343(a)(1)(D). A regulation issued by the Secretary of the Treasury restricts that economic-hardship exception to individual taxpayers. *See* 26 C.F.R. § 301.6343-1(b)(4)(i). Seminole Nursing Home, Inc. challenges the validity of the regulation, contending that the economic-hardship exception must be applied to all taxpayers, including corporations. The United States Tax Court rejected the contention on the ground that the regulation was a reasonable interpretation of an ambiguous statute. *See Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 842–43 (1984). Seminole appeals. Exercising jurisdiction under 26 U.S.C. § 7482(a)(1), we agree with the Tax Court and affirm.

I. BACKGROUND

When Seminole failed to pay $61,916.19 in federal employment taxes due for 2013, the IRS provided notice to Seminole of its intent to issue a levy to collect these unpaid taxes plus penalties and interest. *See* 26 U.S.C. § 6330(a) (requiring notice). After receiving a levy notice the taxpayer has the right to request a collections due-process hearing before the IRS Office of Appeals. *See id.* § 6330(b). The request temporarily suspends the levy. *See id.* § 6330(e)(i). At the hearing the taxpayer may raise "any relevant issue" relating to the tax or levy, including challenges to the appropriateness of the collection action and offers of collection alternatives, such as an installment agreement. *Id.* § 6330(c)(2)(A). The Office of Appeals issues a determination that takes into consideration the "issues raised" and whether the proposed collection action "balances the need for the efficient collection of taxes with the

legitimate concern of the [taxpayer] that any collection action be no more intrusive than necessary." *Id.* §§ 6330(c)(3)(B) and (c)(3)(C).

Seminole requested a collection due-process hearing. Before the hearing it proposed an installment agreement permitting it to pay off its debt through monthly payments of $6,000 to the IRS. And on August 25, 2014, one day before the hearing, Seminole submitted a three-paragraph letter to the Office of Appeals stating that, "[i]n addition to seeking a collection alternative . . . [, it] also seeks to challenge the appropriateness of the proposed levy on the grounds of economic hardship." Aplt. App., Vol. 1 at 86. Seminole acknowledged that its assets included "an outstanding accounts receivable balance of $313,112.98 due to nonpayment of monies billed to Medicare and Medicaid"—more than four times what it owed the IRS in taxes, penalty, and interest at that time. *Id.* at 86. It asserted, however, that a levy would cause economic hardship because it could not sustain a levy "and still provide essential care services to the patients residing at [its] nursing facility." *Id.* Seminole quoted the language of the economic-hardship exception, stating that the plain language of the statute indicated "Congress' intent . . . to mandate the release of a levy if it creates a financial economic hardship on a taxpayer." *Id.* It observed that the text of the statute "does not distinguish between businesses and individuals," and that "the term 'taxpayer' is defined in [the Tax Code] . . . to mean and include an individual, a trust, estate, partnership, association, company or ***corporation***" subject to tax. *Id.* at 86–87. It said that it was "[c]learly" eligible for the economic-hardship exception because it is a corporation experiencing

economic hardship. *Id.* at 87. It did not mention the Treasury Regulation limiting the economic-hardship exception to individuals.

At the hearing, which was conducted by telephone, Seminole did not dispute the amount owed. The Office of Appeals rejected the proposed installment agreement on two grounds: (1) Seminole had sufficient assets to pay its tax debt in full; and (2) it was ineligible for an installment agreement because it had not made all its required federal tax deposits for 2014. The Office also rejected Seminole's economic-hardship argument, explaining that Treasury Regulation § 301.6343-1(b)(4) limits economic-hardship relief to individual taxpayers. And it determined that "[i]n balancing the least intrusive method of collection with the need to efficiently administer the tax laws and the collection of revenue, . . . the balance favors issuance of the levy, and is no more intrusive than necessary." *Id.* at 94. The Office issued a Notice of Determination sustaining the levy.

Seminole petitioned the Tax Court for relief. The court rejected Seminole's economic-hardship argument because Treasury Regulation § 301.6343-1(b)(4)(i) limited that relief to individual taxpayers, and it had previously held in *Lindsay Manor Nursing Home, Inc. v. Comm'r*, 148 T.C. 235, 261 (2017), that the regulation was entitled to *Chevron* deference. It also affirmed that Seminole was ineligible for an installment agreement, although it found that the Office of Appeals had made a calculation error when determining Seminole's monthly income. The court explained that the calculation error did not affect Seminole's installment-plan eligibility, but it could have affected how the Office "balance[d] the need for the efficient collection of taxes" against the

intrusiveness of a collection action. 26 U.S.C. § 6330(c)(3)(C). It therefore remanded the matter to the Office of Appeals to reconsider its balancing analysis.

On remand the Office of Appeals issued a letter to Seminole scheduling a second hearing and requesting that Seminole submit updated financial statements and proof that Seminole was current with its federal tax deposits in advance of the hearing. Seminole did not attend the hearing, nor did it provide the requested documents. The Office issued a second letter providing Seminole with additional time to submit the requested documents, but Seminole still did not respond.

On November 3, 2017, the Office issued a supplemental notice of determination sustaining the levy. In April 2018 Seminole filed motions for reconsideration and summary judgment with the Tax Court. The motions argued, among other things, that the Tax Court should apply the economic-hardship exception to Seminole because, while the case was on remand, this circuit, on the taxpayer's appeal of the Tax Court decision in *Lindsay Manor*, had vacated the Tax Court decision on the ground that the controversy had been "moot when the Tax Court published its decision." *Lindsay Manor Nursing Home, Inc. v. Comm'r*, 725 F. App'x 713, 717 (10th Cir. 2018) (unpublished). But the Tax Court rejected this argument and explained that reconsideration was unnecessary because the Tenth Circuit "only vacated . . . *Lindsay Manor* for procedural purposes (i.e., mootness), not for substantive reasons." Aplt. App., Vol. 2 at 447. The Tax Court denied relief.

Seminole appeals both the Tax Court's affirmance of the IRS's determination sustaining the levy and its denial of the request for reconsideration.

II. DISCUSSION

For better or worse, "taxes are the lifeblood of government, and their prompt and certain availability an imperious need." *Bull v. United States*, 295 U.S. 247, 259 (1935). The Secretary of the Treasury, generally acting through the IRS, has a powerful toolkit to serve that need. Under 26 U.S.C. § 6321, "If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount . . . shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person." And the IRS need not tarry to pursue collection: "If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary to collect such tax . . . by levy upon all property and rights to property [other than certain exempt property] belonging to such person or on which there is a lien . . . ." *Id.* § 6331(a).

The Internal Revenue Code, however, recognizes five exceptional circumstances in which the Secretary must release a levy, at least in part:

> Under regulations prescribed by the Secretary, the Secretary shall release the levy upon all, or part of, the property or rights to property levied upon and shall promptly notify the person upon whom such levy was made (if any) that such levy has been released if—
>
> (A) the liability for which such levy was made is satisfied or becomes unenforceable by reason of lapse of time,
>
> (B) release of such levy will facilitate the collection of such liability,
>
> (C) the taxpayer has entered into an agreement under section 6159 to satisfy such liability by means of installment payments, unless such agreement provides otherwise,
>
> (D) the Secretary has determined that such levy is creating an economic hardship due to the financial condition of the taxpayer, or
>
> (E) the fair market value of the property exceeds such liability and release of the levy on a part of such property could be made without hindering the collection of such liability.

> For purposes of subparagraph (C), the Secretary is not required to release such levy if such release would jeopardize the secured creditor status of the Secretary.

Id. § 6343(a)(1).

This appeal requires us to resolve a controversy concerning the meaning of subparagraph (D), which creates the economic-hardship exception. The focus of the controversy is a regulation issued by the Secretary. The Secretary has a general power under the Tax Code to "prescribe all needful rules and regulations for the enforcement of [the Tax Code], including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue." *Id.* § 7805(a). That authority is magnified with respect to the economic-hardship exception since § 6343(a)(1) itself states that the release of a levy under any of the five exceptions shall be "[u]nder regulations prescribed by the Secretary"; and with respect to the economic-hardship exception in particular, a release of the levy is permissible only if "the Secretary has determined that such levy is creating an economic hardship." *Id.* § 6343(a).

The regulation in question, 26 C.F.R. § 301.6343-1(b), states in pertinent part:

> The [district director, service center director, or compliance center director] must release the levy upon all or a part of the property or rights to property levied upon if he or she determines that one of the following conditions exists—
>
> . . . .
>
> (4) *Economic hardship*—(i) *General rule.* The levy is creating an economic hardship due to the financial condition of an individual taxpayer. This condition applies if satisfaction of the levy in whole or in part will cause an individual taxpayer to be unable to pay his or her reasonable basic living expenses. The determination of a reasonable amount for basic living expenses will be made by the director and will vary according to the unique

> circumstances of the individual taxpayer. Unique circumstances, however, do not include the maintenance of an affluent or luxurious standard of living.
>
> (ii) *Information from taxpayer.* In determining a reasonable amount for basic living expenses the director will consider any information provided by the taxpayer including—
>
> (A) The taxpayer's age, employment status and history, ability to earn, number of dependents, and status as a dependent of someone else;
>
> (B) The amount reasonably necessary for food, clothing, housing (including utilities, home-owner insurance, home-owner dues, and the like), medical expenses (including health insurance), transportation, current tax payments (including federal, state, and local), alimony, child support, or other court-ordered payments, and expenses necessary to the taxpayer's production of income (such as dues for a trade union or professional organization, or child care payments which allow the taxpayer to be gainfully employed);
>
> (C) The cost of living in the geographic area in which the taxpayer resides;
>
> (D) The amount of property exempt from levy which is available to pay the taxpayer's expenses;
>
> (E) Any extraordinary circumstances such as special education expenses, a medical catastrophe, or natural disaster; and
>
> (F) Any other factor that the taxpayer claims bears on economic hardship and brings to the attention of the director.
>
> (iii) *Good faith requirement.* In addition, in order to obtain a release of a levy under this subparagraph, the taxpayer must act in good faith. Examples of failure to act in good faith include, but are not limited to, falsifying financial information, inflating actual expenses or costs, or failing to make full disclosure of assets.

Because the regulation applies only to individuals, and Seminole is a corporation, it was summarily denied its request for an economic-hardship exception. The Tax Court affirmed the denial. Seminole contends that the regulation is unlawful because it contradicts the statute it purports to interpret, which applies to *all* taxpayers, not just individuals.

"We review decisions of the Tax Court in the same manner as civil actions tried without a jury": we "review legal conclusions de novo and factual determinations only

for clear error." *Hamilton v. Comm'r*, 955 F.3d 1169, 1171–72 (10th Cir. 2020) (emphasis omitted). This appeal presents only a legal issue, the interpretation of a statute.

Courts determine the validity of a regulation's interpretation of a statute by applying the two-step framework set forth in *Chevron*. *See Mayo Found. for Med. Educ. & Rsch. v. United States*, 562 U.S. 44, 55 (2011) ("The principles underlying our decision in *Chevron* apply with full force in the tax context.").

Under *Chevron* step one the court asks "whether Congress has directly spoken to the precise question at issue." 467 U.S. at 842. If the statute unambiguously expresses Congress's intent, there is no need to consider the agency's interpretation; "the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." *Id.* at 842–43; *see Wisconsin Ctr. Ltd. v. United States*, 138 S. Ct. 2067, 2074 (2018) (declining to apply *Chevron* deference to IRS interpretation where meaning of statute was clear). Determining whether a statute is ambiguous on a particular point can be an arduous undertaking; "a court must exhaust all the 'traditional tools' of construction." *Kisor v. Wilkie*, 139 S. Ct. 2400, 2415 (2019) (quoting *Chevron*, 467 U.S. at 843, n.9). The court "must carefully consider the text, structure, history, and purpose of a [statute]," and proceed to step two only if "the interpretive question still has no single right answer." *Id.* (internal quotation marks and original brackets omitted).

At step two "the question becomes whether the agency regulation is a permissible construction of the statute." *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291–92 (1988). In determining whether a construction is permissible, "[t]he court need not conclude that

the agency construction was the only one it permissibly could have adopted to uphold the construction, or even the reading the court would have reached if the question initially had arisen in a judicial proceeding." *Chevron*, 467 U.S. at 843 n.11. A construction is a permissible one if it "reflects a plausible construction of the plain language of the statute and does not otherwise conflict with Congress' expressed intent." *Rust v. Sullivan*, 500 U.S. 173, 184 (1991). If the agency's construction is permissible, the court "must give deference to the agency's interpretation of the statute." *K Mart Corp.*, 486 U.S. at 292.

Seminole argues that the hardship exceptional circumstance is unambiguous because 26 U.S.C. § 7701—the definitions section for the Tax Code—defines *taxpayer* as "any *person* subject to any internal revenue tax," § 7701(a)(14) (emphasis added), and defines *person* to include "an individual, a trust, estate, partnership, association, company or *corporation*," § 7701(a)(1) (emphasis added). Also, Seminole notes that "[t]he text [of § 6343(a)(1)(D)] makes no distinction between an individual taxpayer and a corporate taxpayer." Aplt. Br. at 19.

But matters are not so straightforward. To begin with, § 7701(a) prefaces the definitions contained in that subsection by saying that the definitions apply "[w]hen used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof." This language recognizes the general principal that a court must read statutory language in light of the statutory scheme as a whole. *See Davis v. Mich. Dep't of Treasury*, 489 U.S. 803, 809 (1989) ("It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme."); *cf. Gen. Dynamics Land Sys. v. Cline*, 540

U.S. 581, 596 (2004) ("[S]tatutory language must be read in context since a phrase gathers meaning from the words around it." (original brackets and internal quotation marks omitted)).

And the use of the word *taxpayer* in other parts of the Tax Code makes clear that the word can be implicitly limited to individuals. For example, in the very section of the Code containing the provision of interest on this appeal, 26 U.S.C. § 6343(e) provides that the Secretary should release a "levy on the salary or wages payable to or received by the taxpayer, upon agreement with the taxpayer that the tax is not collectible." This provision is necessarily limited to individuals, the only taxpayers who receive salary or wages. *See also* 26 U.S.C. § 7122(d)(2) (requiring Secretary, for purpose of establishing guidelines for compromises of tax liability, to "develop and publish schedules of national and local allowances designed to provide that taxpayers entering into a compromise have an adequate means to provide for basic living expenses").

The question therefore becomes whether it makes sense to apply exceptional circumstance D to a corporation. At the outset, we note that the English language certainly permits the term *economic hardship* to be applied to corporations. This court considered such an application in *Sinclair Wyoming Refining Co. v. United States Environmental Protection Agency*, 887 F.3d 986 (10th Cir. 2017). The Energy Policy Act of 2005 amended the Clean Air Act to encourage the use of renewable fuels. One program under the Act "require[d] oil refineries to either produce a sufficient proportion of renewable fuels as part of their output or purchase credits generated by other refineries to meet their increased renewable-fuel obligations." *Id.* at 988. But the statute granted an

exemption to small refineries "if participation in the program would cause them 'disproportionate economic hardship.' 42 U.S.C. § 7545(o)(9)(B)." *Id.* The reason for the exemption was recognition by Congress that the renewable-fuels requirement "might disproportionately impact small refineries because of the inherent scale advantages of large refineries." *Id.* at 989. Sinclair challenged the EPA interpretation of the exemption as requiring a threat to the long-term *viability* of the small refinery. *See id.* at 994, 996. We rejected the EPA's interpretation, stating that "[b]y making long-term viability a necessary factor in its analysis, the EPA impermissibly reads the word 'disproportionate' out of the statute." *Id.* at 997.

Thus, we recognize that a corporation can experience "economic hardship." In what sense, though, might a corporation suffer economic hardship that could reasonably excuse releasing a tax levy on its assets? Say the corporation is in absolutely dire straits; it cannot survive even if the levy is released, or even if the tax liability is canceled altogether. In that circumstance, what purpose could possibly be served by preventing the IRS from seizing corporate assets under the levy? Perhaps another creditor of the corporation would benefit because it could collect through assets that would otherwise be seized by the IRS. But benefiting other creditors (likely at the expense of the IRS) could hardly be the purpose of the economic-hardship exception. This example points up an essential difference between an individual and a nonindividual entity. We care, care deeply, about the survival of the individual. More than that, we want the individual to have the minimal comforts of life. Taking everything that the individual possesses is not acceptable. This policy is reflected in the statutory provision exempting 13 items from

levy. *See* 26 U.S.C. § 6334(a).[1] All apply to individuals; and the two that might (at least linguistically) also apply to nonindividuals are so limited (books and tools of the trade up

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[1] Subsection 6334(a) states in full:

(a) Enumeration

There shall be exempt from levy—

(1) Wearing apparel and school books

Such items of wearing apparel and such school books as are necessary for the taxpayer or for members of his family;

(2) Fuel, provisions, furniture, and personal effects

So much of the fuel, provisions, furniture, and personal effects in the taxpayer's household, and of the arms for personal use, livestock, and poultry of the taxpayer, as does not exceed $6,250 in value;

(3) Books and tools of a trade, business, or profession

So many of the books and tools necessary for the trade, business, or profession of the taxpayer as do not exceed in the aggregate $3,125 in value.

(4) Unemployment benefits

Any amount payable to an individual with respect to his unemployment (including any portion thereof payable with respect to dependents) under an unemployment compensation law of the United States, of any State, or of the District of Columbia or of the Commonwealth of Puerto Rico.

(5) Undelivered mail

Mail, addressed to any person, which has not been delivered to the addressee.

(6) Certain annuity and pension payments

Annuity or pension payments under the Railroad Retirement Act, benefits under the Railroad Unemployment Insurance Act, special pension payments received by a person whose name has been entered on the Army, Navy, Air Force, and Coast Guard Medal of Honor roll (38 U.S.C. 1562), and annuities based on retired or retainer pay under chapter 73 of title 10 of the United States Code.

(7) Workmen's compensation

Any amount payable to an individual as workmen's compensation (including any portion thereof payable with respect to dependents) under a workmen's compensation law of the United States, any State, the District of Columbia, or the Commonwealth of Puerto Rico.

(8) Judgments for support of minor children

If the taxpayer is required by judgment of a court of competent jurisdiction, entered prior to the date of levy, to contribute to the support

of his minor children, so much of his salary, wages, or other income as is necessary to comply with such judgment.

(9) Minimum exemption for wages, salary, and other income

Any amount payable to or received by an individual as wages or salary for personal services, or as income derived from other sources, during any period, to the extent that the total of such amounts payable to or received by him during such period does not exceed the applicable exempt amount determined under subsection (d).

(10) Certain service-connected disability payments

Any amount payable to an individual as a service-connected (within the meaning of section 101(16) of title 38, United States Code) disability benefit under-

(A) subchapter II, III, IV, V, or VI of chapter 11 of such title 38, or

(B) chapter 13, 21, 23, 31, 32, 34, 35, 37, or 39 of such title 38.

(11) Certain public assistance payments

Any amount payable to an individual as a recipient of public assistance under-

(A) title IV or title XVI (relating to supplemental security income for the aged, blind, and disabled) of the Social Security Act, or

(B) State or local government public assistance or public welfare programs for which eligibility is determined by a needs or income test.

(12) Assistance under Job Training Partnership Act

Any amount payable to a participant under the Job Training Partnership Act (29 U.S.C. 1501 et seq.) from funds appropriated pursuant to such Act.

(13) Residences exempt in small deficiency cases and principal residences and certain business assets exempt in absence of certain approval or jeopardy

(A) Residences in small deficiency cases

If the amount of the levy does not exceed $5,000—

(i) any real property used as a residence by the taxpayer; or

(ii) any real property of the taxpayer (other than real property which is rented) used by any other individual as a residence.

(B) Principal residences and certain business assets

Except to the extent provided in subsection (e)—

(i) the principal residence of the taxpayer (within the meaning of section 121); and

(ii) tangible personal property or real property (other than real property which is rented) used in the trade or business of an individual taxpayer.

to $3,125 in value, and undelivered mail) that they probably would not help a business survive.

What about a business that might be able to survive if the levy is released? It would be ironic if the term *economic hardship* were to be applied to such a business but not to a business in more dire circumstances. But relieving such a business from a levy is questionable policy on its own terms. To be sure, a temporary release of a levy could enable a struggling business to survive and ultimately prosper, which, of course, would be in the interest of everyone, including the IRS. Such a release could, however, create incentives that undermine public policy. As the Sixth Circuit said, albeit in a somewhat different context, "[T]he government is not required to continue subsidizing failing businesses by foregoing tax collection. Any other conclusion would create a bizarre tax system with perverse incentives for businesses to maintain themselves on the edge of insolvency in order to enjoy immunity from tax enforcement." *Living Care Alts. v. United States*, 411 F.3d 621, 628 (6th Cir. 2005); *see also Finley v. United States*, 123 F.3d 1342, 1348 (10th Cir. 1997) (narrowly construing reasonable-cause exception to liability under 26 U.S.C. § 6672 to "avoid making the government an unwilling partner in a floundering business" (internal quotation marks omitted)). Besides, the IRS already has tools to deal with such circumstances when a release is warranted. In particular, § 6343(a)(1)(B) authorizes a release that "will facilitate the collection of [the tax] liability," and subparagraph (C) permits a release under an agreement for installment payments of the tax due.

We think it telling that Seminole makes no attempt to illustrate what an economic-hardship regulation for nonindividuals would look like. And when the Secretary promulgated 26 C.F.R. § 301.6343-1(b) as a proposed regulation, no one suggested expanding the economic-hardship exception to include nonindividuals. *See* 60 Fed. Reg. 33–01, 34–35 (Jan. 3, 1995). It is a reasonable inference that to the extent that applying an economic-hardship exemption to nonindividuals would be consistent with fundamentals of tax policy, the exemption would be an unnecessary addition to other provisions of the Tax Code that accomplish the same purpose. An interpretation of a tax provision that is inconsistent with the purpose of the Code has been rejected by the Supreme Court. *See Slodov v. United States*, 436 U.S. 238, 247 (1978).

Still, given our lack of expertise in the intricacies of the Tax Code, we are reluctant to say that every reasonable interpretation of subparagraph (D) would exclude nonindividuals from its purview. What we can say, however, is that the language of the exemption does not compel that it be interpreted to apply to corporations and that the contours of the exemption are properly left to the expertise of the Secretary. *See Pension Benefit Guar. Corp. v. LTV Corp.*, 496 U.S. 633, 651–52 (1990) ("[P]ractical agency expertise is one of the principal justifications behind *Chevron* deference."). In *Chevron* terms, we conclude that subparagraph (D) is ambiguous and the present regulation is a reasonable interpretation. "The Commissioner's regulation[] [is] neither arbitrary or capricious in substance, nor manifestly contrary to the statute. [It] thus warrant[s] [judicial] approbation." *Astrue v. Capato ex rel. B.N.C.*, 566 U.S. 541, 558 (2012) (original brackets, citation, and internal quotation marks omitted); *see Atl. Mut. Ins. Co.*

v. Comm'r, 523 U.S. 382, 390–91 (1998) (explaining affirmance of regulation under *Chevron* analysis: "There was certainly no need for that deduction to be microscopically fair, and the interpretation adopted by the Treasury Regulation seems to us a reasonable accommodation—and one that the statute very likely intended—of the competing interests of fairness, administrability, and avoidance of abuse.").

As a final matter we address Seminole's argument that the Tax Court erred in denying its motion for reconsideration. "We review a district court's decision denying a motion for reconsideration for abuse of discretion." *Spring Creek Expl. & Prod. Co., LLC v. Hess Bakken Inv., II, LLC*, 887 F.3d 1003, 1024 (10th Cir. 2018). Seminole argues that its motion should have been granted because the Tax Court's decision in its case had relied on the earlier Tax Court decision in *Lindsay Manor*, and this court had set aside the *Lindsay Manor* decision. Seminole cites Fed. R. Civ. P. 60(b)(5), which permits a court to grant relief from a final judgment when the judgment "is based on an earlier judgment that has been reversed or vacated." Our ruling in *Lindsay Manor*, however, was not based on the merits of the Tax Court's opinion; we vacated that court's ruling only because the case had been moot at the time of the ruling. *See Lindsay Manor*, 725 F. App'x at 717. It was hardly an abuse of discretion for the Tax Court to continue to adopt that court's prior reasoning when no higher court had cast doubt on that reasoning. *Cf. United States v. Garcia*, 470 F.3d 1001, 1002–03 (10th Cir. 2006) ("Although [the decision in earlier case] was vacated as moot on rehearing, we are persuaded by its reasoning.").

III. CONCLUSION

We **AFFIRM** the judgment of the Tax Court.