The Scope of the Claim of Right and Trust Fund Doctrines—Reflections on *Hyatt Hotels Corp. & Subsidiaries v. Commissioner*

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Abstract

When this Article was originally written, its focus was on a decision of the Tax Court that mainly dealt with the applicability of the claim-of-right and trust fund doctrines to a fund established by the taxpayer, Hyatt Hotels Corp. & Subsidiaries ("Hyatt") in connection with a customer loyalty awards plan known as the Gold Passport Program. The Tax Court opinion, *Hyatt Hotels Corp. & Subsidiaries v. Commissioner*, was generally well thought-through. In addition to the two judicially created canons that are the focus of this Article, the Tax Court also addressed the use of the trading stamp method exception for recognizing a liability under the Regulations by an accrual method taxpayer, although this is only briefly dealt with in this report. On April 22, 2026, the Seventh Circuit Court of Appeals, in a questionable decision, *Hyatt Hotels Corp. & Subsidiaries v. Commissioner*, vacated and remanded the Tax Court decision. The revised Article now addresses both decisions, concentrating on whether either of these two exclusions from gross income are appropriate in the *Hyatt* fact pattern.

The trust fund doctrine is a court derived exclusion from gross income, recognized by the Tax Court in *Seven-Up Co. v. Commissioner,* that, according to the Tax Court in *Hyatt,* should apply in situations "when a taxpayer (1) receives funds in trust, subject to a legally enforceable restriction that they be spent in their entirety for a specific purpose and (2) does not profit, gain, or benefit from spending the funds for that purpose…" In those circumstances, "the taxpayer may exclude such funds from gross income." The much more well-known claim-of-right doctrine arose from a Supreme Court decision, *North American Oil Consolidated v. Burnett.* which Hyatt

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characterized in its appellate brief as "dispositive" grounds for excluding the payments received by the trust.

The Tax Court accurately characterized "[t]he trust fund doctrine…as a more tailored application of claim of right principles…" It had held Hyatt was subject to income inclusion under this judicial canon. The Seventh Circuit decision to vacate and remand the Tax Court decision was predicated on the Tax Court's failure to apply the claim-of-right doctrine as a standalone methodology for determining whether Hyatt was subject to income inclusion from the Gold Passport Program Fund. While its analysis in this regard appears flawed, this should prove moot to the ultimate outcome *vis-à-vis* the question of Hyatt's liability for Fund income, assuming the Tax Court, on remand, holds, as it should, that Hyatt has gross income inclusion from the Fund because of the considerable economic benefit of the Fund to Hyatt, in keeping with its purpose, coupled with its significant control over it.

Table of Contents

I. Introduction 540

II. Background 541

A. Hyatt's Business & Its Gold Passport Program 541
B. The Claim-of-Right Doctrine 547
C. The Trust Fund Doctrine 553

III. The Tax Court Opinion 562

IV. The Seventh Circuit Opinion 568

V. Analysis 570

VI. Conclusion 581

I. Introduction

When this Article was originally written, its focus was on a generally well-thought-through decision of the Tax Court that mainly dealt with the applicability of two judicially created canons, the claim-of-right and trust fund doctrines, to a fund established by the taxpayer, Hyatt Hotels Corp. & Subsidiaries ("Hyatt") in connection with a customer loyalty awards plan known as the Gold Passport Program. The Tax Court opinion, *Hyatt Hotels Corp. & Subsidiaries v. Commissioner*,[1] also addressed the use of the trading

[1] Hyatt Hotels Corp. & Sub. v. Commissioner, 2023 T.C.M. (RIA) ¶ 2023-122.

stamp method exception for recognizing a liability under the Regulations by an accrual method taxpayer, although the latter is only briefly dealt with in this paper. On April 22, 2026, the Seventh Circuit Court of Appeals, in a questionable decision, *Hyatt Hotels Corp. & Subsidiaries v. Commissioner*, [2] vacated and remanded the Tax Court decision. The Article now addresses both decisions, concentrating on whether either of these two exclusions from gross income are appropriate in the *Hyatt* fact-pattern.

The trust fund doctrine is a court derived exclusion from gross income, recognized by the Tax Court in *Seven-Up Co. v. Commissioner,*[3] that, according to the Tax Court in *Hyatt,* should apply in situations "when a taxpayer (1) receives funds in trust, subject to a legally enforceable restriction that they be spent in their entirety for a specific purpose and (2) does not profit, gain, or benefit from spending the funds for that purpose…"[4] In those circumstances, "the taxpayer may exclude such funds from gross income."[5] The much more well-known claim-of-right doctrine arose from a Supreme Court decision, *North American Oil Consolidated v. Burnett,*[6] which Hyatt characterized in its appellate brief as "dispositive" grounds for excluding the payments received by the trust.[7]

II. Background

A. *Hyatt's Business & Its Gold Passport Program*

Hyatt is a well-known international hospitality provider. The group "owns, leases, manages, and franchises hotel, residential, and timeshare properties … in the United States and internationally."[8] During the years in question, *i.e.*, 2009-2011,[9] Hyatt owned "approximately 20%-25% of all

[2] Hyatt Hotels Corp. & Subsidiaries v. Commissioner, No. 24-3239, 2026 U.S. App. LEXIS 11421 (7th Cir. 2026).

[3] Seven-Up Co. v. Commissioner, 14 T.C. 965, 979 (1950).

[4] *Hyatt*, 2023 T.C.M. (RIA) ¶ 2023-122 at 1081-82, citing Ford Dealers Advert. Fund, Inc., Jacksonville Div. v. Commissioner, 55 T.C. 761, 771 (1971), aff'd, 456 F.2d 255 (5th Cir. 1972).

[5] *Id.*

[6] North American Oil Consolidated v. Burnett, 286 U.S. 417 (1932).

[7] Opening Brief for Petitioner-Appellant at 3, *Hyatt Hotels*, No. 24-3239 [hereinafter Opening Brief for Petitioner].

[8] *Hyatt*, 2023 T.C.M. (RIA) ¶ 2023-122 at 1072.

[9] The Service's notice of deficiency addressed Hyatt's "corporate income taxes for tax years 2005 and 2008 through 2011… The tax deficiencies were based on the IRS's determination that Hyatt had improperly omitted payments into a fund owned and administered by Hyatt from the income it reported on its corporate income tax returns for the years 2009 through 2011…The deficiencies for the years 2005 and 2008 reflected adjustments to carrybacks from the years 2009 through 2011." Brief for the Appellee at 6, *Hyatt Hotels*, No. 24-3239 [hereinafter Brief for the Appellee].

Hyatt-branded hotels"[10] The balance "of the Hyatt-branded hotels were owned by a variety of third-party hotel owners…"[11] With some third-party owned hotel contracts, Hyatt "manage[d] and operate[d] …[the] hotel for a set term."[12] With others, there were "more limited franchise agreements…"[13] [pursuant to which Hyatt] would license [its]…intellectual property for a set term to the …[third-party hotel owner]…which would operate the hotel itself or engage a separate management company to do so."[14]

The Tax Court pointed out that "[t]he inventory of Hyatt-branded hotels was not static during the years at issue."[15] Some third-party owned hotels "removed their affiliation with the Hyatt brand, in a process known in the hospitality industry as 'deflogging.'"[16] There were also new management and franchise agreements between Hyatt and third-party hotel owners during this same time frame.[17] Other changes during the 2009-2011 period included Hyatt obtaining ownership of a small number of previously third-party-owned hotels, as well as vice-versa.[18]

Hyatt's Gold Passport Program ("Program") and similar loyalty plans "are designed to foster brand loyalty, reward repeat business and incentivize future business by awarding guests who stay at participating hotels with points that accumulate and can be redeemed for hotel stays, perks, or other rewards."[19] Specifically, Hyatt's Program provided that customers could become members "and earn rewards points based on their eligible spending at Hyatt-branded hotels."[20] While members "could not redeem rewards points for cash…[,]"[21] rewards points could be converted "into travel miles with one of …[Hyatt's] third-party travel partners."[22] Customers could also opt not to receive reward points, but instead receive travel miles also redeemable with these travel partners of Hyatt.[23]

Hyatt "required that all Hyatt-branded hotels…participate in the Program…"[24] It also compelled "all Hyatt-branded hotels allocate a certain

[10] *Hyatt*, 2023 T.C.M. (RIA) ¶ 2023-122 at 1072.
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] Opening Brief for Petitioner, *supra* note 7, at 6.
[20] *Hyatt*, 2023 T.C.M. (RIA) ¶ 2023-122 at 1073 (footnote omitted).
[21] *Id.*
[22] *Id.* (footnote omitted).
[23] *Id.*
[24] Opening Brief for Petitioner, *supra* note 7, at 7.

percentage of total room inventory for potential redemptions by Program members."[25]

Hyatt commented that its Gold Passport Program was "wildly popular—and wildly successful. During the tax years at issue, the Program had as many as 12 million members."[26] Hyatt pointed out that "Program members accounted for around 25% of total room nights at Hyatt-branded hotels [in this same time period]."[27] Furthermore, "Hyatt's Program was a central component of its marketing efforts."[28]

At the time Hyatt established the Program, it instituted the Gold Passport Fund ("Fund").[29] The Fund operated through "a pair of bank accounts owned and operated by …[Hyatt]."[30] These accounts were only used for the Program and were "not general corporate cash."[31] There was "a regular inflow and outflow of payments [to and from the Fund] between…[Hyatt] and the various owners of Hyatt-branded hotels."[32] In terms of inflow to the Fund, "money came into the Fund through payments from hotels; money was also earned through the accrual of interest and investment of those payments."[33] Hyatt had established an assessment system, wherein "[w]hen a Program member opted to receive rewards points earned from a stay at a Hyatt-branded hotel, the hotel owner would pay …[Hyatt a] fee of four percent of the revenue derived from that member's stay…"[34] Cash inflows also resulted "[w]hen a Program member alternatively opted to receive travel miles instead of rewards points; [in that event] the hotel operator would pay…[Hyatt] the actual cost of the miles…"[35]

In terms of Fund outflows, "when a Program member redeemed rewards points at a Hyatt-branded hotel,…[Hyatt] would pay a compensation payment to the hotel owner out of the Fund."[36] This amount was determined by Hyatt based on a formula that took into consideration "the hotel's

[25] *Id.*

[26] *Id.*

[27] *Id.* This figure had risen to 30.3% by the end of 2011. *Hyatt*, 2023 T.C.M. (RIA) ¶ 2023-122 at 1072-73.

[28] *Hyatt*, 2023 T.C.M. (RIA) ¶ 2023-122 at 1073.

[29] Opening Brief for Petitioner, *supra* note 7, at 7.

[30] *Hyatt*, 2023 T.C.M. (RIA) ¶ 2023-122 at 1074 (footnote omitted).

[31] *Id.* at n.10.

[32] *Id.* at 1074.

[33] Brief for the Appellee, *supra* note 9, at 6.

[34] *Hyatt*, 2023 T.C.M. (RIA) ¶ 2023-122 at 1074. According to the Tax Court, Hyatt "determined to increase the assessment fee to 4.5% for full-service Hyatt-branded hotels, effective January 1, 2012." *Id.* In its brief to the Seventh Circuit Court of Appeals, the Service asserted that "Hyatt increased the payment to 4.5% in 2011." Brief for the Appellee, *supra* note 9, at 6.

[35] *Hyatt*, 2023 T.C.M. (RIA) ¶ 2023-122 at 1074.

[36] *Id.* at 1075 (footnote omitted). The Tax Court observed, however, that "compensation payments would often be recorded as a credit setoff against the amount of Program payments due to …[Hyatt] in monthly invoices." *Id.* at 1075, n. 12.

occupancy rate during the award and the hotel's forecasted monthly average rate …for rooms."[37]

Hyatt also "used the Fund to pay advertising and administrative costs that it designated as related to operating the Program."[38] The Service noted that while "[s]ome of this advertising gave prominence to the Program's logo; other times, Hyatt's own logo was most prominent."[39] Hyatt asserted that "the expenses of marketing and advertising the Program …[was] particularly important to the Program's success. Each dollar spent on Program advertising—as distinct from Hyatt advertising and advertising by individual hotels—generates upwards of eight dollars of revenue for Hyatt-branded hotels."[40]

Advertising and administrative costs were determined by Hyatt personnel, and the third-party hotel owners "did not have any control on how the Fund was spent on administrative costs or advertising."[41] The Service pointed out that "Hyatt also used the Fund to maintain a database with extensive information about individual Members…[which] could also be 'incorporated into targeted advertising of particular customer demographics.'" [42]

With respect to Fund money, Hyatt "entered into agreements with several third-party custodians to hold portions of the Fund…"[43] It also had contracts "with several third-party investment advisors to invest portions of the Fund."[44] The third-party hotel owners "did not have any input or control over the choice of investment advisors or the Fund's investment strategy."[45]

Except for the "annual Fund financial statements provided by…Hyatt…, the… [third party hotel owners] did not regularly receive communications about the performance of the Fund investments."[46] These Fund "financial statements were prepared…in accordance with Generally Accepted Accounting Principles…" and were audited by a third-party accounting firm, Deloitte.[47]

Hyatt's Form 10-K[48] that is filed with the Securities and Exchange Commission for the pertinent years, *i.e.*, 2009-2011, indicated that the Fund "is owned collectively by the owners of Hyatt branded properties, whether

[37] *Id.* (footnote omitted).
[38] *Id.*
[39] Brief for the Appellee, *supra* note 9, at 7.
[40] Opening Brief for Petitioner, *supra* note 7, at 8.
[41] *Hyatt*, 2023 T.C.M. (RIA) ¶ 2023-122 at 1076.
[42] Brief for the Appellee, *supra* note 9, at 7.
[43] *Hyatt*, 2023 T.C.M. (RIA) ¶ 2023-122 at 1074.
[44] *Id.* at 1074-75 (footnote omitted).
[45] *Id.* at 1075.
[46] *Id.*
[47] *Id.* at 1077.
[48] "Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 with the Securities Exchange Commission…" *Id.* at 1077-78.

owned, operated managed or franchised by us…[and that the] Fund is maintained and managed by us on behalf of and for the benefit of Hyatt branded properties."[49] The Fund's financial "statements described the Fund as being owned by the Hyatt-branded hotel owners during the period in which they participated in the Program."[50] Hyatt's position in this regard was very consistent.

When Hyatt retained Northern Trust as "the custodian of the Fund's investment accounts, the custody agreement referred to Hyatt as 'Agent for The Hotels Owned, Leased, Operated, Managed or Franchised By It' and described the Fund as a 'a pooling of funds' over which Hyatt was the 'trustee.'"[51] Hyatt's stance in this regard was repeated in other documents, including letters to the third-party hotel owners, and in its "Hyatt System Services and Hyatt Systems Costs Disclosure."[52] The Fund's independent auditor, Deloitte, "repeatedly echoed the same view…"[53] Despite the foregoing numerous references to Fund ownership, this fact, while certainly not irrelevant, should not by itself determine the outcome of the case.

Insofar as income taxes, in keeping with its position regarding Fund ownership, the Fund's financial statements "described [this] as being an obligation of each Hyatt-branded hotel owner."[54] In its consolidated corporate income tax returns for 2009-2011, Hyatt "reported the Fund's assets and liabilities in the totals reported on its Schedules L, Balance Sheet per Books."[55] In contrast, "for [income] tax purposes , [Hyatt] did not include payments into the Fund [by third-party hotel owners] as its own income, and did not deduct payments out of the Fund as its own expenses."[56]

For income tax purposes, Hyatt "took the … position that it operated in two distinct capacities."[57] As noted above, "[i]n its role as 'agent' for the hotel owners,…[Hyatt] consistently did not include any Program revenue in gross income or claim any deductions with respect to Program expenses."[58] However, "[i]n its role "as owner of 20%-25% of the hotels, …[Hyatt] claimed deductions for its… share of Program expenses, for the tax year in which compensation payments were made out of the Fund."[59] Likewise, "in

[49] *Id.* at 1078.
[50] *Id.* at 1077.
[51] Opening Brief for Petitioner, *supra* note 7, at 10-11.
[52] *Id.* at 10.
[53] *Id.* at 10.
[54] *Hyatt*, 2023 T.C.M. (RIA) ¶ 2023-122 at 1077.
[55] *Id.* at 1078.
[56] Opening Brief for Petitioner, *supra* note 7, at 12.
[57] *Hyatt*, 2023 T.C.M. (RIA) ¶ 2023-122 at 1079.
[58] *Id.*
[59] *Id.*

its role as owner of 20%-25% of the hotels, Hyatt…included in gross income the compensation payments made to it out of the Fund."[60]

The Service's position on audit of Hyatt's consolidated income tax returns for 2009-2011 was that "Hyatt should have treated the entire Fund as its own property, resulting in Hyatt 'recogniz[ing] 100%' of the payments hotel owners made to the Fund in the year of receipt and 'deduct[ing] the costs associated with points that [we]re redeemed' in the year of redemption."[61] Hyatt pointed out that the Service's position in this respect was inconsistent with respect to at least one third-party hotel owner, the Hyatt Regency Chicago, in which it denied permission in 2009 "to treat contributions to the Fund as deductible when paid, and to treat payments from the Fund as income when received…on the grounds that the hotel's share of the Fund remained its (not Hyatt's) property."[62]

The Tax Court observed that during the 2009-2011 timeframe, "a substantial majority of the domestic…[third-party hotel owners] deducted the 4% payments they made under the Program on their federal income tax returns for the year they made the payments into the Fund."[63] That is, these third-party hotel owners' tax "returns reflected the contrary position [to Hyatt] that economic performance had been satisfied with respect to the 4% payments upon payment to …[the Fund]. As the Service observed, "[t]his contradicted Hyatt's approach of treating hotel owners' payments into the Fund as a non-taxable event."[64]

There certainly should be uniformity in treatment between Hyatt and the third-party hotel owners. That is, if the Tax Court's decision is affirmed *vis-à-vis* income inclusion, *i.e.*, the trust is essentially treated as an asset of Hyatt, all the third-party hotel owners' 4% fee should be deductible when paid to the Fund. Conversely, if by virtue of the trust fund doctrine and/or the claim-of-right doctrine, Hyatt was not required to reflect revenue paid the Fund from third-party hotel owners, these hotel owners should be denied a deduction at the time they paid the Fund the 4% fee (but should obtain a deduction when the Fund paid an expense).

Hyatt did not specifically advise third-party hotel owners how to account for the Program on their income tax returns, but instead it "recommended that the…[third-party hotel owners] consult their tax advisors."[65] It did provide the third-party hotel owners "the dollar amount of Program payments made by the…[third-party hotel owner] in that year that related to

[60] *Id.*
[61] Opening Brief for Petitioner, *supra* note 7, at 12.
[62] *Id.*
[63] *Id.*
[64] Brief for Appellee, *supra* note 9, at 8-9.
[65] *Hyatt*, 2023 T.C.M. (RIA) ¶ 2023-122 at 1079.

future year compensation payments.[66] Hyatt's "personnel considered the amounts described in the letters to be the portion of each…[third-party hotel owner's-owned hotel's] allocated expenses that would not be currently deductible for federal income tax purposes because not yet paid out (*i.e.*, not yet meeting the economic performance requirement for deductibility)."[67]

B. *The Claim-of-Right Doctrine*

In *North American Oil Consolidated v. Burnett*, the Supreme Court enunciated what has come to be known as the claim-of-right doctrine, stating "[i]f a taxpayer receives earnings under a claim of right and without restriction as to its disposition, he has received income which he is required to return, even though it may still be claimed that he is not entitled to retain the money, and even though he may still be adjudged liable to restore its equivalent."[68] The case arose from litigation over oil land which the United States had legal title that was in possession of the taxpayer. The United States, "claiming also the beneficial ownership[,] had instituted a suit to oust the…[taxpayer] from possession…"[69] The United States "secured the appointment of a receiver to operate the property, or supervise its operations, and to hold the net income…[from this property]."[70]

In 1917, the taxpayer received money that "represented the net profits which had been earned from that property in 1916 during the receivership."[71] This occurred after the receivership was terminated by a federal district court order.[72] This income that had been "earned from the property in 1916 had been entered on the books of the company as its income…[but] [i]t had not been included in [the taxpayer's] original [federal income tax] return…[that year]."[73] The taxpayer, however, filed an amended return for 1916 reflecting this income.[74]

The Commissioner of Internal Revenue asserted that the taxpayer was taxable on this income in 1917 (a year in which the marginal rate of tax was much higher than 1916).[75] This contrasted with the taxpayer's position that the income was includible in either "1916, because…[it] constitute[d] income of the company accrued in that year…[or alternatively] taxable to it

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[66] *Id.*

[67] *Id.*

[68] *North American Oil,* 286 U.S. at 424.

[69] *Id.* at 420-421.

[70] *Id.* at 421.

[71] *Id.*

[72] *Id.* This decision was affirmed by the Ninth Circuit, and "a further appeal to …[the Supreme] Court was dismissed by stipulation." *Id.*

[73] *Id.*

[74] *Id.*

[75] *Id.*

as income for 1922, since the litigation was not finally terminated in its favor until…[then].”[76]

The Supreme Court determined that it was inappropriate to tax the income in 1916 since, at that point in time, there was a real possibility that the taxpayer “might never receive [the money in question].”[77] The Court also noted that “[t]here was no constructive receipt of the profits by the company in that year, because at no time during the year was there a right in the company to demand that the receiver pay over the money.”[78] The Court also rejected deferral of inclusion until the conclusion of the litigation.[79] Instead, the Supreme Court determined that the amount of money received “became income of the company in 1917, when it first became entitled to…[the money] and when it actually received…[the money].”[80]

The Court indicated that “[i]f in 1922 the Government had prevailed, and the company had been obliged to refund the profits received in 1917, it would have been entitled to a deduction from the profits of 1922, not from those of any earlier year.”[81] The Supreme Court also noted that the same analysis would apply whether the taxpayer utilized the cash receipts or accrual methods of accounting.[82]

Thus, as observed by Professors Boris Bittker and Lawrence Lokken, the claim-of-right doctrine “necessarily rejects the theory that the taxation of disputed amounts can be held in abeyance until the final results of the transaction are known”[83] They further noted that this was also illustrated by another Supreme Court case, *United States v. Lewis*,[84] “which held that an employee who received a bonus in 1944 and repaid about half of it in 1946, when a state court decided that the bonus had been erroneously computed, could not reopen his 1944 return and get a refund based on a recalculation of that year’s tax liability.”[85]

When a taxpayer is subject to taxation of income under the claim-of-right doctrine, and “later repays a claim of right amount, a corresponding deduction is generally available in the year of repayment.”[86] Section 1341, however, enacted “in response to the *Lewis* case … [permits taxpayers to

[76] *Id.* at 422.
[77] *Id.* at 423.
[78] *Id.*
[79] *Id.* at 424.
[80] *Id.*
[81] *Id.*
[82] *Id.* at 423.
[83] BORIS I. BITTKER & LAWRENCE LOKKEN, FEDERAL TAXATION OF INCOME, ESTATES, AND GIFTS ¶ 6.3.1 (Thomson Reuters ed., 2d/3d ed., 1993-2019 & 2025 Cum. Supp. No. 1) (database updated March 2025).
[84] United States v. Lewis, 340 U.S. 590 (1951).
[85] *Id.*
[86] Harold Dubroff, *The Claim of Right Doctrine*, 40 TAX L. REV. 729 (1985).

instead calculate]…(1) a tax for the repayment year computed without the deduction, less (2) the decrease in tax that would have resulted for the earlier year if the repaid amount had been excluded from that year's gross income."[87]

Professor James Maule observed that the claim-of-right doctrine requires that three conditions be satisfied.[88] These are, "[f]irst, the taxpayer must be in receipt of income. Second, the taxpayer must receive the income under a claim of right. Third, there must not be any restriction on the taxpayer's economic use of the income."[89] Professor Harold Dubroff commented that, after the Supreme Court's decision in *James v. United States,*[90] discussed *infra* (holding that embezzled funds are taxable), "[o]ddly…the third element of the formulation, and that from which the doctrine derives its name—may no longer be a necessary condition to its application."[91]

A principal contention of Hyatt, on appeal, was that the claim-of-right "doctrine is dispositive."[92] It essentially argued that "[u]nder that doctrine, for a receipt of funds to be income, the recipient must 'receive[] [them] under a claim of right' and 'without restriction as to [their] disposition.'"[93] In other words, Hyatt asserted that because the Fund amounts did not come within the claim-of-right doctrine, payments made to the Fund (and earnings of the Fund) should be excluded from its gross income.

The Service, on the other hand, argued that the claim-of-right doctrine is a "tool for the Commissioner to establish that money received by a taxpayer, albeit under dispute, still comes 'within the broad sweep' of what counts as income."[94] It was, according to the Service, "a litmus test for whether a taxpayer *must* include in its income funds it has received."[95] According to the Service, however, "[t]riggering the claim of right doctrine is not necessary for income inclusion…"[96] That is, "[r]egardless of whether a taxpayer triggers the doctrine, money might nonetheless constitute income to the taxpayer under the Internal Revenue Code's 'sweeping' definition of

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[87] BITTKER & LOKKEN, *supra* note 83, at ¶ 6.3.4 (provided that the amount of the deduction exceeds $3,000).

[88] James E. Maule, *Gross Income: Tax Benefit, Claim of Right and Assignment of Income,* 502-4th TAX MGMT PORT. (BNA) III.B.1.

[89] Maule, *supra* note 88.

[90] James v. United States, 366 U.S. 213 (1961).

[91] Dubroff, *supra* note 86, at 733. Note, however, that the Service takes the position that bank robbers, embezzlers, and individuals similarly engaged in illegal activities are not eligible to take advantage of the options offered by section 341. *See* Nacchio v. United States, 824 F.3d 1370 (Fed. Cir. 2016).

[92] Opening Brief for Petitioner, *supra* note 7, at 3.

[93] *Id.* (quoting *North American Oil,* 286 U.S. at 424).

[94] Brief for the Appellee, *supra* note 9, at 18 (quoting *James*, 366 U.S. at 219).

[95] *Id.* at 15 (emphasis in original).

[96] *Id.*

income…[under section 61]…a provision that reflects Congress' intent to tax all gains except those specifically exempted.[97]

The Supreme Court had, at one point, certainly subscribed to Hyatt's interpretation of the meaning of "claim of right." In *Commissioner v. Wilcox*,[98] a bookkeeper, employed in a Reno, Nevada transfer and warehouse company, embezzled about $12,700 from his employer. He wound up losing "practically all of this money in various gambling houses in Reno."[99] The issue before the Court was "whether the wrongful acquisition of funds by an embezzler should be included in the statutory phrase 'gains or profits and income derived from any source whatever,' thereby constituting taxable income to the embezzler."[100]

The Supreme Court, in *Wilcox,* declared "that a taxable gain is conditioned upon (1) the presence of a claim of right to the alleged gain and (2) the absence of a definite, unconditional obligation to repay or return that which would otherwise constitute a gain."[101] In holding that the embezzled funds should not be included in the taxpayer's gross income, the Court observed that the taxpayer "received the money without any semblance of a bona fide claim of right."[102]

The theory and holding of *Wilcox* were, however, relatively short lived. *Wilcox* was overruled by the Supreme Court 15 years later in *James v. United States.*[103] In *James,* the taxpayer was "a union official who, with another person, embezzled in excess of $ 738,000 during the years 1951 through 1954 from his employer union and from an insurance company with which the union was doing business."[104] The Court held him to be taxable on the embezzled funds, finding that "*Wilcox* was wrongly decided and we find nothing in congressional history since then to persuade us that Congress intended to legislate the rule."[105] The Court in *James* stated "the obvious intent of …Congress [was] to tax income derived from both legal and illegal sources, [and] to remove the incongruity of having the gains of the honest laborer taxed and the gains of the dishonest immune."[106]

Even prior to *James*, the Supreme Court in *Rutkin v. United States,*[107] had held that money obtained by extortion was included in gross income. The Court there stated that "[a]n unlawful gain, as well as a lawful one, constitutes

[97] *Id.*
[98] Commissioner v. Wilcox, 327 U.S. 404 (1946).
[99] *Id.* at 406.
[100] *Id.* at 406-407 (quoting from then Code section 22(a)).
[101] *Id.* at 408.
[102] *Id.*
[103] *James*, 366 U.S. 213.
[104] *Id.* at 214.
[105] *Id.* at 221.
[106] *Id.* at 218.
[107] Rutkin v. United States, 343 U.S. 130 (1952).

taxable income when its recipient has such control over it that, as a practical matter, he derives readily realizable economic value from it."[108] The Court, then, however, was not yet ready to overrule *Wilcox*, which took another nine years.

A post-*Rutkin*, but pre-*James*, Seventh Circuit decision, *Macias v. Commissioner*,[109] cited by the Service in its brief in *Hyatt* to the Seventh Circuit,[110] involved the taxation of embezzled funds. In that case, which upheld a lower court decision that embezzled funds must be included in gross income, the court opined that, in *Rutkin,* "the Court, while not expressly so stating, evidently repudiated the so-called 'claim of right' doctrine embraced in *Wilcox*. Otherwise, the Court could not have reached the result which it did in *Rutkin*."[111]

Professors Bittker & Lokken, in their treatise, comment that the "theory, which elevated the claim of right doctrine from a basis for taxing the recipient of disputed income to a prerequisite to taxing anyone on anything, was abandoned in 1961 when *Wilcox* was overruled by *James v. United States*."[112] They note that "if the claim of right doctrine is given a more conventional and literal meaning, *James* must be taken as a repudiation of the use of the doctrine as a basis for exclusion."[113]

Importantly, however, they point out that *James* "might be read to make the words 'claim of right' a term of art largely disconnected from the usual meaning of the words; … according to this reading of *James*, [claim of right] is not that the taxpayer has a legal claim or even a semblance of a right, but that the taxpayer possesses funds without 'a consensual recognition…of an obligation to repay.'"[114] The Court in *James* itself spoke of triggering income under the claim-of-right doctrine when a " taxpayer acquires earnings, lawfully or unlawfully, without the consensual recognition, express or implied, of an obligation to repay and without restriction as to their disposition…" [115] The Tax Court gave further credence to this interpretation of the meaning of claim of right, when it stated in *Reeves v. Commissioner*, that the claim-of-right doctrine was "reaffirmed and expanded in *James*. . ."[116]

As discussed further below, post-*James* case law seems supportive of the need for a "claim of right" for amounts received to be taxable, but under the Supreme Court's expansive construction of that term in *James,* permitting

[108] *Id.* at 137.

[109] Macias v. Commissioner, 255 F. 2d 23 (7th Cir. 1958).

[110] Brief for the Appellee, *supra* note 9, at 22.

[111] *Macias,* 255 F.2d at 26.

[112] BITTKER & LOKKEN, *supra* note 83, at ¶ 6.3.2 (footnote omitted).

[113] BITTKER & LOKKEN, *supra* note 83, at ¶ 6.3.2.

[114] BITTKER & LOKKEN, *supra* note 83, at ¶ 6.3.2 (footnote omitted, quoting Peters v. Commissioner, 51 T.C. 226, 231 (1968)).

[115] *James*, 366 U.S. at 219.

[116] Reeves v. Commissioner, 36 T.C.M. (CCH) 500, 501, T.C.M. (P-H) ¶ 77,114, at 505 (1977).

even ill-gotten gains to be deemed as held under a "claim of right," demonstrates that the focus of that term has changed. Thus, while the "claim of right" requirement to gross income inclusion seems to be alive despite the Service's protestations, its meaning has changed with the focus, post-*James,* to be the receipt of property without a consensual obligation to repay.

This explanation of the post-*James* meaning of "claim of right" is also consistent with the treatment of trustees and intermediaries. Professors Bittker & Lokken observed earlier in their treatise's discussion of the claim-of-right doctrine that "amounts paid to trustees, messengers, and other intermediaries are not received under a claim of right within the meaning of *North American Oil Consolidated* and hence not taxed to them."[117] They add, with relevance to the *Hyatt* case, that "[t]he claim of right doctrine, however, does reach putative trustees and agents who, properly or improperly, exercise control over the funds for their own benefit."[118]

Another post-*James* Tax Court decision, *Diamond v. Commissioner,*[119] is illustrative of the notion that courts believe that "claim of right" continues to have relevance to gross income inclusion of purported conduits after *James.* In *Diamond,* the taxpayer-husband received certain payments in his capacity as a mortgage broker with respect to loans which builders received from a certain bank. During the same year he made secret payments to members of the family who controlled that bank. After the case went to trial, the taxpayers (husband and wife) "filed an amendment to their petition, claiming…[as an] alternative that petitioner acted merely as a conduit for the Moravecs [the family controlling the bank] in respect of the amounts paid to them and that the aggregate of such amounts should never have been included in gross income in the first instance."[120]

Under this alternative position, the taxpayers contended that the family which controlled the bank, "the Moravecs…[were also] in complete control of the commissions received by petitioner from the borrowers, and proceeded upon the explicit assumption that the Moravecs merely 'permitted Petitioner to retain all commissions other than the amounts' which he paid over to them."[121] In other words, this position "portrayed petitioner 'as a conduit for the Moravecs,' and sought to have excluded from the commissions actually received by petitioner the amounts which he paid to them as 'Consultants fees.'"[122]

Significantly, the Tax Court began its analysis, a decade after *James*, with "[w]e accept as sound law the rule that a taxpayer need not treat as income

[117] BITTKER & LOKKEN, *supra* note 83, at ¶ 6.2.
[118] BITTKER & LOKKEN, *supra* note 83, at ¶ 6.3.2 (footnote omitted).
[119] Diamond v. Commissioner, 56 T.C. 530 (1971).
[120] *Id.* at 540.
[121] *Id* .at 541.
[122] *Id.*

moneys which he did not receive under a claim of right, which were not his to keep, and which he was required to transmit to someone else as a mere conduit."[123] The court, however, concluded that the taxpayer-husband was "no mere conduit."[124] The Tax Court determined "that petitioners have failed to carry their burden of proof, that the commissions were received by petitioner under a claim of right, and that they must include all commissions received in 1961 in their gross income."[125] As examined in the Analysis section, *infra, Diamond* and *Reeves* certainly support the view that *James* should not be read as nullifying the application of the claim-of-right doctrine as pertains income exclusion.

As will be further discussed, i*nfra,* the Seventh Circuit in *Hyatt* firmly rejected the Service's contention that the claim-of-right doctrine "is not to be wielded by a taxpayer to dispositively *exclude* money from taxable income."[126] While there is some support for the government's assertion of the limitation of this canon, this aspect of the Seventh Circuit's opinion seems to be the arguably correct one.

C. *The Trust Fund Doctrine*

The Tax Court, in *Ford Dealers Advertising Fund, Inc. v. Commissioner,*[127] articulated what has been referred to as the trust fund doctrine as follows: "when a taxpayer receives trust funds, which he is obligated to expend in entirety for a specified purpose and no profit, gain, or other benefit is to be received by him in so doing, the funds are not includable in gross income."[128] That is, "an intermediary may be employed as a depository for funds in trust which are destined for an ultimate use that is specified within defined limits. The benefit, profit, or gain is not to accrue to the intermediary…"[129]

As discussed further *infra,* the trust fund doctrine was characterized by the Tax Court in *Hyatt* "as a more tailored application of the claim of right principles…"[130] As the Tax Court observed there, under this theory, "if a taxpayer holds funds in trust subject to a use restriction and for the primary benefit of others, it naturally follows that such funds are not 'received and treated by a taxpayer as belonging to [it]'—i.e., without a claim of right."[131] The Seventh Circuit was in full agreement with this aspect of Tax Court opinion but, as elaborated upon *infra,* was of the view that "funds that aren't

[123] *Id.* (footnote omitted).
[124] *Id.*
[125] *Id.*
[126] Brief for the Appellee, *supra* note 9, at 18-19.
[127] *Ford Dealers*, 55 T.C. 761.
[128] *Id.* at 771.
[129] *Id.* at 773.
[130] *Hyatt*, 2023 T.C.M. (RIA) ¶ 2023-122 at 1082.
[131] *Id.* (quoting Healy v. Commissioner, 345 U.S. 278, 282 (1953).

eligible for exclusion under the trust fund doctrine may still be excludable under the claim of right doctrine. Put differently, the claim of right doctrine provides a broader basis for exclusion than the trust fund doctrine."[132] This matter is addressed below.

In *Ford Dealers Advertising*, a nonprofit corporation received funds from auto dealers selling Ford Motor Co. vehicles, which pursuant to a written agreement were to be used solely for "advertising and promoting the automotive products and services of the members, and necessary corporate expense incident thereto." [133] The Tax Court indicated "that an intermediary may be employed as a depository for funds in trust which are destined for an ultimate use that is specified within defined limits."[134]

Professors Bittker & Lokken described the wider context to which trust fund doctrine income belongs to include "[a]monts [r]eceived by [t]rustees, [n]ominees, [a]gents and [o]ther [c]onduits."[135] They note that "[i]n circumstances so diverse as to defy useful generalization, funds are received by persons acting for the benefit of others. It is often obvious that the recipient is not required to include the funds in gross income."[136] While caveating that "it is perilous to generalize in an area that embraces a myriad of diverse factual situations [Professors Bittker & Lokken observed that] the courts and the IRS generally permit recipients of funds to exclude them from gross income if restrictions severely limiting their right to deal with the funds effectively deprive them of any beneficial interest."[137]

Professors Bittker & Lokken quote the Tax Court in *Lykes Energy Inc. v. Commissioner*[138] that "[f]unds received by a taxpayer are excludable from gross income when: (1) The funds are received in trust subject to a restriction that they be expended for a specific purpose and (2) the taxpayer does not profit, gain, or benefit in spending the funds for the stated purpose."[139] A further requirement is that the "trust requires that (1) a person (2) take title to property (3) pursuant to an explicit directive (4) to preserve or protect the property."[140]

In *Lykes Energy*, one of the issues the Tax Court had to "decide [was] whether funds collected by Lykes' subsidiary, People's Gas System, Inc. (People's), under the terms of certain energy conservation programs (FEECA

[132] *Hyatt*, No. 24-3239, 2026 U.S. App. LEXIS 11421 *at* *11-*12.

[133] *Ford Dealers*, 55 T.C. at 764.

[134] *Id.* at 773.

[135] BITTKER & LOKKEN, *supra* note 83, at ¶ 6.2.

[136] BITTKER & LOKKEN, *supra* note 83, at ¶ 6.2.

[137] BITTKER & LOKKEN, *supra* note 83, at ¶ 6.2.

[138] Lykes Energy, Inc. v. Commissioner, 77 T.C.M. (CCH) 1535, 1999 T.C.M. (RIA) ¶ 99,077.

[139] BITTKER & LOKKEN, *supra* note 83, at ¶ 6.2 (quoting *Lykes Energy,* 77 T.C.M. (CCH) at 1538, 1999 T.C.M. (RIA) ¶ 99,077 at 430).

[140] *Id.* (quoting *Lykes Energy,* 77 T.C.M. (CCH) at 1538, 1999 T.C.M. (RIA) ¶ 99,077 at 430).

programs) …[were] includable in People's gross income."[141] The Tax Court determined that "People's …[did] not meet this test. It did not receive the FEECA receipts in trust."[142] The Tax Court cited two reasons why the trust fund doctrine was inapposite, either one of which would serve to require the amounts to be taxable to People's. For one, "the purported settlors, namely People's customers, never intended to create a trust or even knew they were funding the FEECA programs. People's received the FEECA receipts from its customers as payments for gas, and the customers, at the time of payment, did not know that any part of the payments was for other than their gas use."[143] Second, which is more relevant to the *Hyatt* fact pattern, "[t]he subsidies paid by People's benefited it significantly in that they encouraged utility users to purchase gas appliances from People's. The effect of the FEECA programs was that they served to shift the cost of these subsidies from People's to its rateholders. [These]…programs also increased People's rate base, number of customers, and sales."[144]

The Service rejected application of the trust fund doctrine in Revenue Ruling 76-276.[145] In that ruling, "[a] trust was established for the purpose of providing funds for certain travel expenses incurred by the taxpayer [a member of Congress] and the taxpayer's staff in connection with the performance of official congressional duties."[146] The Service determined that the amounts contributed to the trust were included in the taxpayer's gross income. It reasoned that "the taxpayer can control the distribution of trust funds by determining the extent to which the taxpayer or members of the taxpayer's staff will travel in connection with the discharge of the taxpayer's congressional duties and responsibilities. The payment of the expenses incurred in such travel is a direct and substantial benefit to the taxpayer."[147]

Professors Bittker & Lokken, in their treatise, contrasted the holding and reasoning of Revenue Ruling 76-276 with an earlier revenue ruling.[148] In Revenue Ruling 59-92,[149] "the chief pathologist [at] …a certain hospital, applied for and received from the local county heart association, an organization exempt from Federal income taxes, a research grant made specifically to pay the costs of conducting specific investigations in the field of pathology."[150] Revenue Ruling 59-92 noted that "[u]nder the terms of the grant, the work on the project was to be done in the hospital laboratory; the

[141] *Lykes Energy*, 77 T.C.M. (CCH) at 1536, 1999 T.C.M. (RIA) ¶ 99,077 at 427.
[142] *Id. at* 1538 (CCH), 430 (RIA).
[143] *Id.*
[144] *Id.*
[145] Rev. Rul. 76-276, 1976-2 C.B. 14.
[146] *Id.*
[147] *Id.*
[148] BITTKER & LOKKEN, *supra* note 83, at ¶ 6.2.
[149] Rev. Rul. 59-92, 1959-1 C.B. 11.
[150] *Id.*

taxpayer was designated the principal investigator for the project; and the funds granted to him were to be expended for the salary of a part-time laboratory technician and for certain supplies and equipment…"[151] Furthermore, "any unexpended portion [of the funds was]…to be returned to the grantor. Title to any permanent equipment purchased with such funds remained in the grantor."[152] The Service determined that in this situation, *i.e.*, "where a taxpayer receives funds burdened with an obligation to be expended for a specific purpose and earmarked for such purpose, the funds so held do not constitute gain or income to the taxpayer."[153] The pathologist didn't personally benefit from the funds, other than it allowed him to conduct research in his field.

An important early case addressing the trust fund doctrine, cited and discussed by the Tax Court in *Hyatt*, is *Seven-Up Co. v. Commissioner.*[154] The Tax Court there explained that the taxpayer "manufactur[ed] and …[sold] 7-Up extract to various franchised bottling companies, sometimes…[referred to as] bottlers."[155] The taxpayer gave "each bottler an exclusive territory and each bottler controll[ed] the sales of the bottled beverage within the bottler's territory. The bottlers each carr[ied] on their own sales promotion and local advertising within their respective territory with the aid, suggestions, and counsel of …[Seven-Up Co,] specialists."[156]

At some point, 7-Up bottlers had "discussed among themselves the inauguration of a national advertising program."[157] This included "the establishment of a trust fund or 'kitty' …[because] they anticipated that they would have to pay the cost of any national advertising program for 7-Up."[158] This was due to the fact that the 7-Up bottlers' margin of profit was much higher than that of bottlers of other soft drinks.[159] The Tax Court made clear that "[t]hese discussions were initiated by the 7-Up bottlers and not by…[the Seven-Up Co.]."[160]

The advertising agency, J. Walter Thompson Co., which became "familiar with the 7-Up bottlers' problem and with 7-Up advertising and merchandising methods, drafted a program for the national advertising of the carbonated beverage 7-Up and presented it to the…[Seven-Up Co.] in order to get the opinion of its officers as to the advisability of presenting it to the

[151] *Id.*
[152] *Id.*
[153] *Id.*
[154] Seven-Up Co. v. Commissioner, 14 T.C. 965 (1950).
[155] *Id.* at 966.
[156] *Id.* at 967.
[157] *Id.* at 968.
[158] *Id.*
[159] *Id.* at 967 & 968.
[160] *Id.* at 968.

bottlers."[161] At J. Walter Thompson Co.'s suggestion, "21 [large] 7-Up bottlers, representing more than 50 per cent of the sales volume of bottled 7-Up, were invited to a two-day meeting in St. Louis…, so that the advertising agency could present its reasons for 7-Up bottlers undertaking the national advertising program."[162] Its presentation "assumed that the cost of the program was to be paid by the 7-Up bottlers and dealt with the problem of how the cost should be shared among them."[163]

After much discussion (and some disagreement among the bottlers) they "finally settled upon…[a] 2 ½ cents per case method of contribution…[to a fund]."[164] Since the "bottlers had no central organization of their own…[and the advertising agency lacked facilities for handling the money] the J. Walter Thompson Co. recommended that 7-Up bottlers make their payments to …[the Seven-Up Co]."[165] The bottlers were assured that the funds collected would be used for national advertising and that the "books on advertising receipts and expenditures will be open to any bottler at any time."[166]

By the end of 1944, "there were 382 7-Up bottlers purchasing extract…[from the Seven-Up Co.], and of that number 365 had signed the letter of agreement."[167] The Tax Court observed that while the Seven-Up Co. "tried to bring nonparticipating bottlers into the program…"[168] it "never canceled or attempted to cancel the franchise of any nonparticipating 7-Up bottler either because he did not agree to participate in the national advertising program or because he did not make payments to the national advertising fund."[169]

In its communication with non-participating bottlers, the Seven-Up Co. stressed that they "don't owe us any money on this advertising since we are merely trustees, handling the bottlers' money…[;] the balance involved is an obligation on your part to the other bottlers to do your share in national advertising."[170] J. Walter Thompson Co. "regarded the 7-Up bottlers as its client [and not the Seven-Up Co.] and, in order to give every bottler who was contributing to the national advertising fund its full share of the expenditure, it was obliged to select the network which would give full coverage

[161] *Id.*
[162] *Id.*
[163] *Id.*
[164] *Id.* at 969.
[165] *Id.*
[166] *Id.*
[167] *Id.* at 971.
[168] *Id.*
[169] *Id.*
[170] *Id.* at 972.

throughout the country."[171] Furthermore, the advertising agency "reported directly to the 7-Up bottlers concerning the national advertising program."[172]

The Tax Court pointed out that while the amounts received from the bottlers for national advertising "were commingled and deposited by…[the Seven-Up Co.] in various banks [,]…[it] did not establish a separate bank account for national advertising funds because such funds were segregated and earmarked on its books."[173] Refunds, in the event a bottler sold or cancelled its franchise, did not revert to the individual bottler or the Seven-Up Co. but instead "were to remain in the fund to be spent for national advertising…"[174] If "the bottlers decided to terminate the program and there were funds on hand at such time, all funds on hand were to be spent for national advertising until exhausted."[175]

For the tax years in question, *i.e.*, 1943 and 1944, the Seven-Up Co. in its Federal income and excess profits tax returns "neither reported in taxable income the amounts charged to or received from 7-Up bottlers under the terms of their agreements which…[the Seven-Up Co.] had credited to the national advertising appropriation account…"[176] Furthermore, it did not "deduct… expenditures made for national advertising which…[the Seven-Up Co.] had charged against the account."[177] The Service "contend[ed] that the excess of the amounts received by petitioner from 7-Up bottlers during the taxable years over expenses incurred and paid by it for national advertising constitute[d]...taxable income to…[the Seven-Up Co.]"[178]

In holding for the taxpayer, the Tax Court observed that "[t]he payments made by the participating bottlers were not for services rendered or to be rendered by…[the Seven-Up Co.] Neither were they part of the purchase price of the extract."[179] Therefore, according to the court, "[t]hey did not, therefore, constitute *earnings* received by petitioner under a claim of right and without restriction as to disposition, which petitioner would have had to include in its gross income under the rule laid down in *North American Oil Consolidated* v. *Burnet*…"[180] The reference to *North American Oil* is consistent with the Tax Court's comment in *Hyatt* that "[t]he trust fund doctrine is best understood as a more tailored application of claim of right principles; if a taxpayer holds funds in trust subject to a use restriction and for the primary benefit of others, it naturally follows that such funds are not

[171] *Id.* at 973.
[172] *Id.*
[173] *Id.* at 974.
[174] *Id.*
[175] *Id.*
[176] *Id.* at 976.
[177] *Id.*
[178] *Id.*
[179] *Id.* at 977.
[180] *Id.* (emphasis in the original).

received and treated by a taxpayer as belonging to [it]'—i.e., without a claim of right."[181]

Central to the Tax Court's reasoning in *Seven-Up Co.* was "that it was the intention of all of the parties concerned that these contributions were to be used to acquire national advertising for the 7-Up bottled beverage and for that purpose only, and that… [the Seven-Up Co.] was to be a conduit for passing on the funds contributed to the advertising agency ... for … national advertising."[182] The Seven-Up Co. "considered itself, as evidenced by its letter of May 2, 1944, to one of the participating bottlers, merely as a trustee, handling the bottlers' money."[183]

The Tax Court found that the arrangement "constituted a trust fund for advertising purposes which it administered as agent for the bottlers…"[184] Furthermore, "[a]s custodian of the funds and agent for the bottlers, …[the Seven-Up Co.] was obligated to expend them for national advertising, and any diversion for corporate or other purposes might be enjoined by the bottlers by a suit in equity." [185]

The Tax Court observed that "mere dominion over money or property…" is not always includible in taxable income.[186] The Seven-Up Co. "did not receive the bottlers' contributions as its own property. They were burdened with the obligation to use them for national advertising. No gain or profit was realized on their receipt because of this offsetting obligation."[187]

Another case worth examining in this area and also cited in *Hyatt* is the Ninth Circuit decision in *Angelus Funeral Home v. Commissioner.*[188] In *Angelus,* the taxpayer was "a California corporation engaged in the business of providing funeral and burial services."[189] Until September 1961, Angelus provided certain customers a written contract that "provided for payment by the individual of a small down payment at the signing of the contract, and for voluntary payments of additional small amounts each month until a set sum was reached."[190] Under this arrangement, "Angelus agreed that when the individual died it would apply the total amount paid toward the cost of the individual's funeral."[191] In the event "the individual died at a place where Angelus could not perform its services, Angelus was to transfer the entire sum

[181] *Hyatt*, 2023 T.C.M. (RIA) ¶ 2023-122 at 1082.
[182] *Seven-Up Co.,* 14 T.C. at 977.
[183] *Id.* at 978.
[184] *Id.*
[185] *Id.*
[186] *Id.*
[187] *Id.* at 979.
[188] Angelus Funeral Home v. Commissioner, 407 F.2d 210 (9th Cir. 1969), *aff'g,* 47 T.C. 391 (1967).
[189] *Id.* at 211.
[190] *Id.*
[191] *Id.*

collected by it to a reputable funeral home which would provide the service."[192]

The Angelus funeral contract, pre-September 1961, provided that the monies paid to Angelus "shall be held by [Angelus]…in irrevocable trust for the uses and purposes herein set forth."[193] Furthermore, the contract provided that Angelus "agrees that it will deposit all sums paid to it under this Agreement in a bank, trust company or savings and loan association and that it will not thereafter withdraw such sums, or any portion thereof, except for the uses and purposes herein set forth…"[194] The contract did include a very limited exception wherein Angelus was allowed "at its discretion [to] withdraw such sums for the purpose of redeposit in some other bank, trust company or savings and loan association."[195] Under this pre-September 1961 version of the funeral contract, Angelus "could withdraw the funds only upon proof of the death of the individual, and then could use the funds only to provide funeral services." [196]

The interest earned on the deposited money accrued to Angelus as a fee for handling and accounting for the money."[197] This interest was included in the taxpayer's gross income, but it excluded the other amounts paid it until the year "when it was required to fulfill the contractual obligations."[198]

In September 1961, Angelus modified its pre-need contract with customers. While the irrevocable trust language remained as is, the new agreement gave Angelus the option to "use all or any portion of such sums as collateral or payment for (i) the costs of any capital improvement to [its] existing mortuary facilities…and (ii) the acquisition and improvement of real property."[199]

The Tax Court in *Angelus,* had determined that with respect to the pre-September 1961 contract, "Angelus was a 'true trustee' …and that it had no right to use the money paid by the contracting individuals."[200] As a result, "Angelus was not taxable in the year of receipt on the payments collected under these agreements."[201] The Service did not appeal this part of the Tax Court's decision.[202]

The Tax Court also determined that the new agreements Angelus had with its customers was taxable because it "gave Angelus extensive rights to the

[192] *Id.*
[193] *Id.*
[194] *Id.*
[195] *Id.*
[196] *Id.*
[197] *Id.*
[198] *Id.*
[199] *Id.*
[200] *Id.*
[201] *Id.*
[202] *Id.*

payments and thereby destroyed the trust arrangement between the parties."[203] The Ninth Circuit affirmed this part of the Tax Court's decision.[204]

In reaching its decision, the Court of Appeals observed that its "task…[was] to determine whether the economic benefit to Angelus as trustee is such that Angelus should be taxable on receipt of the payments, notwithstanding whatever power the beneficiaries may have to enforce the trust terms under state law."[205] The court noted that "[n]ot every receipt of benefits by a trustee subjects him to taxation on payments to the trusts."[206] It commented that "a line of cases involving cemetery maintenance or perpetual care trusts recognizes that while the primary beneficiaries are the lot or niche purchasers, the cemetery also benefits from good maintenance of its premises…"[207] In those decisions, the Ninth Circuit pointed out that "if the payments into the trust fund cannot be used for the corporate purposes of the trustee cemetery, they are shielded from taxation despite the incidental benefit to the cemetery."[208]

This exclusion from taxation, however, was inapplicable where "the trust funds were available under the terms of the trust to promote future capital improvements in the taxpayer's property…"[209] In reaching its decision, the Ninth Circuit reasoned that "[t]he 1961 form of Angelus' pre-need agreement gave Angelus the power to use the funds whenever it wished, subject only to limitations of purpose, i.e., land acquisition or improvement of mortuary facilities."[210] Moreover,

> [t]hese purposes would benefit Angelus, not the agreeing individuals who are beneficiaries under the trusts. Further, all of the trust funds are subject to Angelus' power…[T]he absolute power to benefit itself inhering in Angelus' position as trustee makes it liable for taxation on receipt of the pre-need payments.[211]

Accordingly, "[t]he trust permit[ted] Angelus to benefit itself more than incidentally, and therefore the trust…[did] not operate to shield Angelus from [immediate] taxation…"[212] As examined further below, the Tax Court and this writer were of the opinion that the holding in *Angelus* was very

[203] *Id.*
[204] *Id.* at 214.
[205] *Id.* at 212.
[206] *Id.*
[207] *Id.*
[208] *Id.* (footnote omitted).
[209] *Id.* at 213 (quoting Mount Vernon Gardens, Inc. v. Commissioner, 298 F.2d 712, 716 (6th Cir. 1962).
[210] *Id.*
[211] *Id.*
[212] *Id.*

relevant to the Hyatt fact-pattern. The Seventh Circuit, as discussed further, *infra,* believed, however, that the Tax Court's reliance on *Angelus* was flawed. The appellate court stated in this regard that "*Angelus…* doesn't stand for the proposition that economic benefit alone [under the clam-of-right doctrine] is sufficient to make funds income."[213]

III. The Tax Court Opinion

The Tax Court had to decide whether Hyatt was entitled to exclude Fund income on grounds that it was "entitled to exclude the Program revenue from gross income under [either or both] the claim of right doctrine"[214] or the trust fund doctrine. Hyatt also contended that if neither of these doctrines were found by the Tax Court to be applicable, then it should be allowed to use the regulatory trading stamp method which, if determined to be applicable, "would allow…[Hyatt] to offset against gross receipts both (1) the cost of current year redemptions (i.e., current year compensation payments) and (2) the net addition to the estimated cost of future tax year redemptions that corresponds to rewards points issued to members during the taxable year."[215]

The Tax Court devoted almost no time to the claim-of-right argument, simply stating that "[w]e do not understand [the claim of right] doctrine to provide an independent basis for exclusion of the Program revenue in these circumstances. The trust fund doctrine is best understood as a more tailored application of claim or right principles…"[216] As discussed further *infra,* Hyatt contended in its appeal to the Seventh Circuit that the Tax Court "erred in refusing to apply the claim of right doctrine."[217]

With respect to the relevance of the trust fund doctrine, the Tax Court explained that the Tax Court in *Seven-Up Co. v. Commissioner,* "recognized a particular exclusion from gross income, which has come to be known as the trust fund doctrine."[218] As previously discussed, the Seven-Up Co. "maintained a collective fund for the purpose of paying for national advertising of its signature soft drink beverage."[219] The fund received voluntary contributions from some of the third-party bottlers and purchasers of 7-Up extract.[220] The money was in fact "used to pay for national radio and magazine advertising…"[221] of the brand. As observed in a later Tax Court decision, "[t]he payments made by the participating bottlers were not for

[213] *Hyatt*, 2026 U.S. App. LEXIS 11421, at *13.
[214] *Hyatt*, 2023 T.C.M. (RIA) ¶ 2023-122 at 1082.
[215] *Id.* at 1093-94.
[216] *Id.* at 1082.
[217] Opening Brief for Petitioner, *supra* note 7, at 20.
[218] *Hyatt*, 2023 T.C.M. (RIA) ¶ 2023-122 at 1081.
[219] *Id.* (citing *Seven-Up*, 14 T.C. at 968-71).
[220] *Id.* (citing *Seven-Up*, 14 T.C. at 970-71).
[221] *Id.*

services rendered or to be rendered by…[the taxpayer]."[222] The Tax Court in *Seven-Up Co.* "concluded that the payments were not includible in [Seven-Up Co.'s] gross income, reasoning that the taxpayer did not gain or profit because of the fully offsetting restriction on its use of the fund."[223] Even prior to *Seven-Up*, the Tax Court pointed out that there existed a line of cases providing for gross income exclusion for "payments made by cemetery lot customers to cemetery associations for perpetual care or capital improvements."[224]

The Tax Court, in *Hyatt,* noted that the trust fund doctrine was, subsequent to *Seven-Up Co.,*

> refined…[and] now holds that when a taxpayer (1) receives funds in trust, subject to a legally enforceable restriction that they be spent in their entirety for a specific purpose and (2) does not profit, gain, or benefit from spending the funds for that purpose, then the taxpayer may exclude such funds from gross income.[225]

The court stated that "[w]hen both elements of the trust fund doctrine are present, the taxpayer is deemed to be a mere conduit or custodian of funds and not the beneficial owner for federal income tax purposes."[226]

In its analysis of the application of the trust fund doctrine, the Tax Court in *Hyatt* stressed that, under this doctrine, "any benefit inuring to the taxpayer from the use of a purported trust fund cannot be more than 'incidental and secondary.'"[227] In determining the trust fund doctrine to be inapplicable, the Tax Court noted that Hyatt "mandated that the…[third-party hotel owners] participate in the Program and pay into the Fund, [and it] controlled the amounts of Program payments in and compensation payments out of the Fund…"[228]

In reaching its determination that Hyatt was taxable on the Fund income, the Tax Court also observed that Hyatt "essentially retained the right to reimburse itself out of the Fund at its own discretion."[229] Furthermore, Hyatt "decided how to invest the Fund, accrued interest and realized investment gains from holding the Fund, and determined whether particular advertising or administrative costs would be paid for by the Fund—all without oversight or input from the…[third-party hotel owners]."[230] This resulted in Hyatt

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[222] *Ford Dealers*, 55 T.C. at 771.
[223] *Hyatt,* 2023 T.C.M. (RIA) ¶ 2023-122 at 1081 (citing *Seven-Up*, 14 T.C. at 979).
[224] *Id.* at 1082.
[225] *Id.* at 1081.
[226] *Id.* at 1082.
[227] *Id.* at 1083 (quoting *Angelus*, 47 T.C. at 396, 398).
[228] *Id.* at 1084.
[229] *Id.* at 1085.
[230] *Id.* at 1084.

being "benefited in a number of ways from how it exercised its control over the Program and Fund."[231]

According to the Tax Court a major benefit Hyatt obtained from this arrangement was as owner of 20%-25% of the Hyatt-branded hotels. The court indicated in this regard that "Program advertising paid for out of the Fund effectively shifted to the Fund the cost of at least some of the advertising that…[Hyatt] would have paid to generate stays at its owned hotels—a direct benefit to…[Hyatt]."[232] Furthermore, advertising for the Program "also directly benefited [Hyatt] beyond the revenue from each individual hotel stay…[T]he long-term success of a chain hospitality business like [Hyatt's] depends significantly upon maintaining and increasing the goodwill that customers associate with the Hyatt brand."[233]

The Tax Court also pointed out that "[a]s the owner of the Hyatt trademarks, …[Hyatt] directly benefited from the Program advertising, which included such trademarks and thus maintained and enhanced the value of [Hyatt's] goodwill."[234] The court elaborated that "[n]ot only did customer goodwill generate repeat hotel stays and thus direct and indirect revenue for [Hyatt]… but it also granted…[Hyatt] additional contractual leverage in its role as prospective franchisor or manager for hotel properties."[235] According to the Tax Court, Hyatt "could rely on the increased goodwill associated with the Hyatt brand in negotiating higher royalties, management fees, and other fees in new agreements reached with existing or prospective…third-party hotel owners—a direct benefit to it."[236]

Moreover, a third-party hotel owner benefitted from the enhanced Hyatt goodwill, engendered from Program advertising "only for so long as it was entitled to do so pursuant to the duration of the applicable management or franchise agreement."[237] Furthermore, even if the third-party hotel owner "continued on with the Hyatt brand, any increased goodwill value would presumptively be accounted for in higher contract fees when the time for renewal of a management or franchise agreement came around."[238]

The Tax Court also noted that expenditures the Fund incurred for the Program member database "primarily benefited" Hyatt.[239] The court stressed that "the aggregate customer analytics generated by the member database were highly useful to…[Hyatt] in its marketing efforts and decision making.

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[231] *Id.*
[232] *Id.* at 1086.
[233] *Id.*
[234] *Id.* at 1087.
[235] *Id.*
[236] *Id.*
[237] *Id.*
[238] *Id.*
[239] *Id.* at 1088.

The member database was owned and maintained by…[Hyatt], and deflagging…[third-party hotel owners] were not entitled to retain the confidential data…"[240]

In its determination that Hyatt should be taxed on the income from the Fund because it directly benefited from it, the Tax Court also cited Hyatt's "back-end control over the timing and amounts of compensation payments out of the Fund to hotel owners."[241] The court pointed out that Hyatt "had the discretion to raise the bar for rewards points redemptions, make rewards points expirable, change the awards category for certain hotels, and create other conditions that would tend to increase the available balance of the Fund and decrease the amount and frequency of compensation payments."[242]

The Tax Court summarized its decision *vis-a-vis* the trust fund doctrine as follows: "[G]iven the totality of [Hyatt's] control and discretion over the Program and the Fund and how its use of the Fund directly benefited it, …[Hyatt] has failed to establish that the trust fund doctrine is applicable to it."[243] The Tax Court conclude[d] "that…[Hyatt] was more than just a mere intermediary or conduit, passively holding funds and then remitting them on for the convenience of others, with only an incidental benefit to itself."[244]

The Tax Court next addressed whether the Service could make an adjustment under section 481, an issue the court ruled in Hyatt's favor, and to which the Service did not contest on appeal.[245] As described by the Tax Court, the issue in this regard was "whether a change in Hyatt's tax treatment of …[payments received, interest accrued and investment gains realized] constitute…[d] a change in method of accounting subject to [a] section 481 adjustment."[246] Given that this issue is now settled, it will only be very briefly addressed herein.

Pursuant to section 481, "if 'income escapes taxation because of a change in the accounting method,' the Commissioner is empowered under section 481(a) to 'make an adjustment by including the omitted income in the year of the change.'"[247] The Tax Court determined that Hyatt's "consistent, total exclusion of the Program revenue and nontaking of deductions for Program expenses did not involve timing, at least so long as the Program continued in perpetuity."[248] If the Program was in fact terminated, based on credible testimony at trial, the Tax Court believed "any remaining balance of the Fund

[240] *Id.*
[241] *Id.*
[242] *Id.* (footnote omitted).
[243] *Id.*
[244] *Id.*
[245] Brief for the Appellee, *supra* note 9, at 9.
[246] *Hyatt*, 2023 T.C.M. (RIA) ¶ 2023-122 at 1071.
[247] *Id.* at 1088-89 (quoting Graff Chevrolet Co. v. Campbell, 343 F.2d 568,570 (5th Cir. 1965).
[248] *Id.* at 1091.

would have been refunded to the participating hotel owners…and thus…[Hyatt] would still not have reported the Fund in gross income or taken deductions."[249] As a result, the Tax Court did "not sustain…[the Service's] determination of a section 481 adjustment."[250]

The final issue decided by the Tax Court was "whether Hyatt may adopt the trading stamp method with respect to the years at issue."[251] Hyatt contended that if it was required to "recognize payments to the Fund as its income, then it should be able to deduct the associated cost."[252] This amount, according to Hyatt, was "the estimated redemption cost at the time of the issuance or sale when computing its income for tax purposes…"[253] This would be achieved by utilizing the trading stamp method pursuant to Regulation section 1.451-4.[254]

The Tax Court explained the trading stamp method as follows: "A longstanding regulatory provision offers a narrow, de facto exception to the all events test for an accrual method taxpayer that (1) 'issues trading stamps or premium coupons with sales' and (2) 'such stamps or coupons are redeemable by such taxpayer in merchandise, cash or other property.'"[255] Normally, for an accrual method taxpayer to take into account a liability, *i.e.*, obtain a deduction, it must satisfy the three-prong all events test, which the Tax Court described as "(1) 'all the events have occurred that establish the fact of the liability'; (2) 'the amount of the liability can be determined with reasonable accuracy'; and (3) 'economic performance has occurred with respect to the liability.'"[256] If, however,

> both conditions [for the trading stamp method] are applicable, [under this method] the taxpayer may offset against gross receipts from such sales an amount equal to "[t]he cost to the taxpayer of merchandise, cash, and other property used for redemptions in the taxable year' plus 'the net addition to the provision for future redemptions during the taxable year."[257]

In short, "the trading stamp method effectively accelerates what otherwise would have been future year deductions and serves as an exception to the general rule that reserves for contingent liabilities are not

[249] *Id.* at 1092.
[250] *Id.*
[251] *Id.* at 1071 (footnote omitted).
[252] Opening Brief for Petitioner, *supra* note 7, at 38.
[253] *Id.*
[254] *Id.*
[255] *Hyatt*, 2023 T.C.M. (RIA) ¶ 2023-122 at 1093 (quoting Treas. Reg. § 1.451-4(a)(1)) (footnote omitted).
[256] *Id.* (quoting Treas. Reg. § 1.461-1(a)(2)(i).
[257] *Id.* at 1093 (quoting Treas. Reg. § 1.451-4(a)(1)).

deductible."[258] If the trading stamp method was determined to be permissible for Hyatt, it

> would allow…[Hyatt] to offset against gross receipts both (1) the cost of current year redemptions (i.e., current year compensation payments) and (2) the net addition to the estimated cost of future tax year redemptions that corresponds to rewards points issued to members during the taxable year.[259]

For the trading stamp method to be utilized by Hyatt, the rewards points would have needed to be considered "redeemable in 'merchandise, cash or other property'…."[260] The Service asserted that Hyatt didn't meet these criteria "because the rewards points at issue were redeemable for services (*i.e.*, hotel stays and air travel), rather than 'merchandise, cash or other property.'"[261] Hyatt's position was that "the right to receive hotel stay or airline miles…are both 'other property.'"[262]

The Tax Court held that Hyatt's Program rewards were not considered "other property." In reaching this conclusion, the Tax Court noted that "[i]n determining the plain meaning of the catchall category in the phrase 'merchandise, cash, or other property,' the interpretive canon of ejusdem generis is particularly useful."[263] This canon, the court explained, "counsels that when 'a more general term follows more specific terms in a list, the general term is usually understood to embrace only objects similar in nature to those objects enumerated by the preceding specific words.'"[264]

The Tax Court then observed that "[i]n the tax law, 'merchandise' has long been understood as a term of art, meaning 'goods held for sale' by the taxpayer."[265] The court reasoned that in "[a]pplying ejudem generis …[w]e…interpret the catchall category [*i.e.*, other property] to apply only to property similar in nature to 'merchandise' and 'cash.'"[266] That is, it would be improper, the court opined, to interpret the words "'other property' to broadly encompass all manner of property rights…"[267] The Tax Court thus concluded that Hyatt's position that "other property" embodied hotel stays and airline miles was untenable.

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[258] *Id.*
[259] *Id.* at 1093-94.
[260] *Id.* at 1094 (quoting Treas. Reg. § 1.451-4(a)(1)).
[261] *Id.* (quoting Treas. Reg. § 1.451-4(a)(1)).
[262] *Id.* (quoting Treas. Reg. § 1.451-4(a)(1)).
[263] *Id.*
[264] *Id.* (quoting Epic Systems v. Lewis, 584 U.S. 497, 512 (2018)).
[265] *Id.* at 1095.
[266] *Id.*
[267] *Id.*

IV. The Seventh Circuit Opinion

On April 22, 2026, the Seventh Circuit Court of Appeals vacated and remanded the Tax Court decision in *Hyatt*.[268] It agreed with Hyatt that, contrary to the Tax Court's determination, "[t]he claim of right doctrine provides a basis for income exclusion that is independent from and broader than the trust fund doctrine."[269] It therefore found that the Tax Court "erred when it concluded that Fund income was Hyatt's income based on the trust fund doctrine, without considering Hyatt's argument for exclusion based on the claim of right doctrine."[270] The Seventh Circuit instructed the Tax Court on remand "to consider whether Fund income constituted income to Hyatt under the claim of right doctrine…"[271]

As to a second argument that Hyatt made at appeal, to wit: "if the Fund was Hyatt's property and Fund income was its income, then it was entitled to use the trading stamp method…"[272] The Seventh Circuit stated that because of its order for the Tax Court to consider applicability of the claim of right doctrine, "we need not decide whether Hyatt is eligible to use the trading stamp method."[273] The appellate court did, however, opine that the Tax Court "erred when it concluded that Hyatt couldn't use the trading stamp method because 'other property' must be tangible."[274] It didn't, however, make a final decision on the applicability of this methodology. Instead, the appellate court indicated that the Tax Court "has the flexibility to consider other arguments regarding Hyatt's eligibility to use the trading stamp method, should that issue arise."[275] As noted in the Introduction, *supra,* the applicability of the trading stamp method is outside the scope of this article.

The Seventh Circuit stated that "[based] on *Commissioner v. Indianapolis Power & Light Company*[276]…[the claim of right doctrine] also operates as one of income exclusion."[277] As was discussed above, this determination appears to arguably be the correct one, but this is not entirely free from doubt.[278]

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[268] *Hyatt*, 2026 U.S. App. LEXIS 11421.
[269] *Id.* at *7-*8.
[270] *Id.* at *8.
[271] *Id.*
[272] *Id* at *6.
[273] *Id.* at *8.
[274] *Id.* at *17.
[275] *Id.*
[276] Commissioner v. Indianapolis Power & Light Co., 493 U.S. 203 (1990),
[277] *Hyatt*, 2026 U.S. App. LEXIS 11421 *at* *9.
[278] *See, e.g.,* commentary by Professors Bittker & Lokken that the Supreme Court decision in *James v. United States*, "must be taken as a repudiation of the use of the doctrine as a basis for the exclusion." Bittker & Lokken, *supra* note 83, at ¶ 6.3.

The appellate court next focused on "the relationship between…[the claim of right]doctrine and the trust fund doctrine."[279] The Seventh Circuit indicated that it was in agreement with the Tax Court "that the trust fund doctrine is a more tailored application of claim of right principles. In effect, it's one way of determining that the taxpayer does not have a claim of right to the funds at issue."[280] That is, "funds excludable from income under the trust fund doctrine are also excludable under the claim of right doctrine."[281]

The Seventh Circuit, however, opined, as noted *supra*, that "funds that aren't eligible for exclusion under the trust fund doctrine may still be excludable under the claim of right doctrine. Put differently, the claim of right doctrine provides a broader basis for exclusion than the trust fund doctrine."[282] Applying this rationale, the court of appeals determined that the Tax Court's reasoning was flawed in finding "that Fund income was income to Hyatt solely because Hyatt directly benefited from its use and thus failed to satisfy the trust fund doctrine. But the claim of right doctrine offers another, broader, basis to exclude income. The court therefore also should have considered Hyatt's arguments under the claim of right doctrine."[283]

Citing *Indianapolis Power & Light,* the appellate court observed that "the Supreme Court has explicitly rejected the idea that economic gains are always taxable as income."[284] As will be elaborated upon below, both the Seventh Circuit's decision to ignore how the claim-of-right doctrine should be utilized in these circumstances and its reliance on *Indianapolis Power & Light* for so doing are problematic.

The appellate court then addressed its interpretation of the *Angelus Funeral Home* decision of the Ninth Circuit that was, as noted above, relied upon by the Tax Court. This will be discussed in the Analysis section *infra.*

The Seventh Circuit did not, however, agree with Hyatt that it should hold that "Fund income wasn't its income under the claim of right doctrine…"[285] Instead, the court of appeals properly left it to the Tax Court to make a decision in the first instance regarding the application of the claim of right doctrine, separate from the trust fund doctrine, because it had "never applied the claim of right test and, in fact, explicitly declined to resolve issues relevant to that analysis, such as whether the Fund was subject to a legally enforceable use restriction."[286] This was the saving grace to a generally

[279] *Hyatt*, 2026 U.S. App. LEXIS 11421 *at* *10-*11.

[280] *Id.*at *11.

[281] *Id.*

[282] *Id.* at *11-*12.

[283] *Id.* at *12-*13.

[284] *Id.* at *12, with the Seventh Circuit quoting *Indianapolis Power & Light,* 493 U.S. at 214, "[A] taxpayer does not realize taxable income from every event that improves his economic condition." *Id.* at 12.

[285] *Id.* at *15.

[286] *Id.*

questionable decision, which as elaborated upon below, will hopefully not change the outcome *vis-a-vis* income inclusion.

V. Analysis

The focus of this Article (and, accordingly, this analysis) is whether Hyatt should be able to exclude Fund income under either the claim-of-right or trust fund doctrines.[287] Hyatt contended on appeal that because the Fund received the amounts paid by third-party hotel owners without a "claim of right" and, among other things, "segregated the Fund from its own assets,"[288] the amounts must be excluded from Hyatt's gross income.[289] It asserted "[t]hat [the claim of right] doctrine is dispositive."[290] That is, according to Hyatt, "[u]nder the claim of right doctrine, Hyatt correctly treated the Fund as collectively owned by hotel owners, not by Hyatt itself, and was right not to factor Fund inflows and outflows into its taxable income."[291]

In its appellate argument, Hyatt had marshalled the facts that supported its position. These included the fact that Hyatt "was under a *legal* obligation to use Fund assets only for Program-related expenditures."[292] Furthermore, Hyatt did not profit from any services it provided to the Gold Passport Program or the Fund."[293] It stated in this regard that "if Hyatt employees performed services for the Program or the Fund, Hyatt charged the Fund 'at cost,' without any 'markup.'"[294] Hyatt "did not borrow from the Fund, use the Fund as collateral, or use Fund assets for non-Program-related purposes."[295] Moreover, "Hyatt …used Funds only for Program-related expenses, and…consistently communicated to various parties across many settings that the Fund was owned collectively by hotel owners and Hyatt managed the Fund for those owners."[296] Finally, "if the Program terminated,

[287] Given this focus, I will not dwell on the arguments advanced by Hyatt and the Service regarding the trading stamp method of accounting authorized by the Treasury Regulations, or the Seventh Circuit's holding in this matter, other than to say that Hyatt's arguments in this regard seem untenable, despite the Seventh Circuit's opinion. As the Service persuasively argues in its appellate brief to the Seventh Circuit: "Hyatt falls outside the Regulation because, however broad the meaning of 'property' may be in the abstract, as the Tax Court correctly held, hotel stays and airline miles are not 'other property' within the Regulation's reference to 'merchandise, cash, or other property.'" Brief of Appellee, *supra* note 9, at 40-41.

[288] Opening Brief for Petitioner, *supra* note 7, at 3.

[289] *Id.*

[290] *Id.*

[291] *Id.*

[292] *Id.* at 17.

[293] *Id.*at 3.

[294] *Id.* at 11.

[295] *Id.*

[296] *Id.* at 17.

Hyatt would be required to distribute any remaining assets to hotel owners."[297]

Hyatt additionally claimed that the Tax Court was in error for bypassing the claim-of-right doctrine in its analysis, "and instead applied its own 'trust fund' doctrine…[as] a 'more tailored application of claim of right principles.'"[298] It also argued that "while the trust fund doctrine should not have been applied in the first place, it ultimately yields the same result as the claim of right doctrine, if applied properly."[299] In advancing its position that the claim-of-right doctrine mandates that it was improper to treat the Fund, in effect, as an asset of Hyatt, it declared that "[i]t is indisputable that Hyatt did not assert any claim of right over payments into the Fund and that it could use the Fund only for Program-related purposes benefiting Hyatt-branded hotel owners generally."[300]

In contrast, the Service had essentially argued that the claim-of-right doctrine was an arrow solely in the Service's quiver, and not that of the taxpayer. That is:

> [t]he claim of right doctrine allows the Commissioner to attribute income to the taxpayer even though the taxpayer may have to return the money later…The doctrine thus provides a tool for the Commissioner to establish that money received by the taxpayer, albeit under dispute, still comes "within the broad sweep" of what counts as income…The doctrine is not to be wielded by a taxpayer to dispositively *exclude* money from taxable income.[301]

According to the Service, "[t]he Supreme Court [in *North American Oil*] announced the [claim of right] doctrine as sufficient for ascribing income to the taxpayer, but made no suggestion that it was simultaneously establishing a *prerequisite* to recognizing income."[302] Among the authorities cited in support of its position that having a "claim of right" is not a criterion for income inclusion was the statement in the Bittker & Lokken treatise that "the Supreme Court's decision in *James* 'must be taken as a repudiation of the use of the doctrine as a basis for the exclusion.'"[303]

The Service bolstered its position in this regard by asserting that "[m]uch of Hyatt's argument" in this regard "rests on … [an] error of logic, which is called the fallacy of the inverse or 'denying the antecedent.'" As the Service sees the matter, "Hyatt leaps from a true proposition—earnings are income to the taxpayer if they meet both criteria of the claim of right doctrine—to

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[297] *Id.*
[298] *Id* at 3.
[299] *Id.*at 4.
[300] *Id.* at 20.
[301] Brief for the Appellee, *supra* note 9, at 18-19 (quoting *James*, 366 U.S. at 219).
[302] *Id.*at 18 (emphasis in the original).
[303] *Id.* at 22 (quoting BITTKER & LOKKEN, *supra* note 83, at ¶ 6.3).

the unsupported proposition that earnings are not income to the taxpayer if they fail to satisfy either prong of the doctrine."[304]

While the Service's position was not without support, as was discussed *supra*, the appellate court rejected it entirely, based on its analysis of *Indianapolis Power & Light*. As to the merits of the Service's and Hyatt's respective positions on this point, it should be noted that the Service neglected to analyze Professors Bittker and Lokken's alternative theory of interpreting *James,* which is that a lack of a "claim of right" can be asserted by taxpayers to exclude amounts from gross income, but that "claim of right" should be understood "not that the taxpayer has a legal claim or even semblance of a right, but that the taxpayer possesses funds without 'a consensual recognition…of an obligation to repay.'"[305]

In its winning argument to the Seventh Circuit, Hyatt contended that "the [claim of right] doctrine is one of inclusion *and* exclusion."[306] In this regard, central to Hyatt's assertion was that "*James* [d]id [n]ot [f]undamentally [a]lter [t]he [c]laim-[o]f-[r]ight doctrine."[307] It argued that "*James*…reaffirmed that the claim-of-right test is simply an articulation of the bedrock principle that a receipt of money is not income unless the recipient has 'complete dominion' or 'actual command' over it."[308] Hyatt also pointed out that "[t]he Commissioner's view of the claim-of-right doctrine also cannot be squared with his view of the trust-fund doctrine. The Commissioner accepts that the trust-fund doctrine can exclude income, and that it has been applied that way post-*Rutkin.*"[309]

The Service's assertion that taxpayers have no right to assert "claim of right", *i.e.*, this "understanding of …[this aspect of the claim of right] doctrine… the Supreme Court has long since buried,"[310] seems to ignore the fact that the traditional understanding of what that term means has evolved. "Claim of right" may best be understood, post-*James*, as not an arguable legal right to the property, but instead merely its receipt "without the consensual

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[304] *Id.* at 16-17. The Third Circuit recognized this same point in *National Starch v. Commissioner*, 918 F.2d 426 (3d Cir. 1990), *aff'd sub. nom.* INDOPCO v. Commissioner, 503 U.S. 79 (1992), where it endorsed the government's argument that just "'because something made out of glass is fragile'" does not mean that "'all things fragile must be made out of glass.'" *Id.* at 429-430 (citing Brief for Appellee at 28 n. 13).

[305] BITTKER & LOKKEN, *supra* note 83, at ¶ 6.3.2 (quoting *James*, 366 U.S. at 219). The footnote reference to that quote provides: "*See* Reeves v. CIR, 36 TCM (CCH) 500 (1977) (doctrine of *North American Oil Consolidated* was "reaffirmed and expanded" by *James*); Peters v. CIR, 51 TC 226, 231 (1968) (consensual recognition rationale of *James* implicit in *North American Oil Consolidated*.)." *Id.* at n.26.

[306] Reply Brief for Petitioner-Appellant, at 3, *Hyatt Hotels*, No. 24-3239 (emphasis in original).

[307] *Id.* at 5.

[308] *Id.* at 7.

[309] *Id.* at 9 (emphasis in original).

[310] Brief for the Appellee, *supra* note 9, at 22.

recognition, express or implied, of an obligation to repay and without restriction as to their disposition…"[311]

In assessing valid arguments by both parties, this writer is of the opinion that this facet of the Seventh Circuit's decision is justifiable. As will be examined below, however, other aspects of the appellate court's reasoning are more perturbing. Before turning to these troubling portions of the court of appeals decision, it is worth commenting on the generally well-thought-through Tax Court analysis, as well as Hyatt's disagreement with it, as to why the Tax Court determined Hyatt had gross income inclusion from the Fund (separate and apart from its opinion that a taxpayer could not assert of the claim of right doctrine to justify income exclusion).

An important and logical determination made by the Tax Court in *Hyatt* was that "[t]he trust fund doctrine is best understood as a more tailored application of claim of right principles…"[312] That is "if a taxpayer holds funds in trust subject to a use restriction and for the primary benefit of others, it naturally follows that such funds are not 'received and treated by a taxpayer as belonging to [it]'—*i.e.*, without a claim of right."[313] As observed *supra,* this was not disputed by the appellate court.[314]

In the seminal trust fund doctrine decision, *Seven-Up Co. v. Commissioner,* the Tax Court concluded that the bottlers' payments to the advertising fund "did not… constitute *earnings* received by petitioner under a claim of right and without restriction as to disposition, which petitioner would have had to include in its gross income under the rule laid down in *North American Oil Consolidated* v. *Burnet*…"[315] Even Hyatt acknowledged that "[i]n the early 1950s… [*i.e.*, at the time the *Seven-Up Co.* decision was rendered] the Tax Court saw no daylight between the trust fund doctrine and the claim of right doctrine."[316]

Hyatt, however, contended that sometime after the Tax Court decided *Seven-Up Co.,* the Tax Court essentially went rogue. In Hyatt's words, "at some point between… [early 1950's] and the mid-1970's, the trust fund doctrine took a life of its own in Tax Court."[317] It was referring to what the Tax Court, in *Hyatt,* had characterized as the trust fund doctrine having been "refined."[318] As noted *supra,* the Tax Court's position was that under this legal standard "when a taxpayer (1) receives funds in trust, subject to a legally enforceable restriction that they be spent in their entirety for a specific

[311] *James*, 366 U.S. at 219.
[312] *Hyatt*, 2023 T.C.M. (RIA) ¶ 2023-122 at 1082.
[313] *Id.* (quoting *Healy,* 278 U.S. at 282-83).
[314] *Hyatt*, 2026 U.S. App. LEXIS 11421 *at* *11.
[315] *Seven-Up Co.,* 14 T.C. at 977 (emphasis in the original).
[316] Opening Brief for Petitioner, *supra* note 7, at 31.
[317] *Id.*
[318] *Hyatt*, 2023 T.C.M. (RIA) ¶ 2023-122 at 1081.

purpose and (2) does not profit, gain, or benefit from spending the funds for that purpose, then the taxpayer may exclude such funds from gross income."[319] The second criterion is deemed satisfied if the benefit derived by the taxpayer is only "incidental and secondary."[320]

Hyatt asserted that this understanding of the trust fund doctrine is "inconsistent with… [the claim-of-right doctrine] in two critical respects."[321] While Hyatt contended that the first element of the trust fund was not in harmony with the claim-of-right doctrine,[322] a major objection was with "the second element—that the taxpayer derives no benefit [other than incidental or secondary] from spending the funds for the designated purpose."[323] It stated that "[t]his prong is an added requirement that is not faithful to the origins of the trust fund and is unsupported as an analytical manner."[324]

Hyatt pointed out that "the Supreme Court …has [not] imposed a 'no benefit' requirement on the claim of right doctrine."[325] While this is an accurate description of the Court's formulation of the claim-of-right doctrine in *North American Oil*, the decision addressed when a taxpayer was required to include income and not necessarily when a taxpayer was entitle to exclude it.

As part of its argument in this regard, Hyatt cited *Commissioner v. Indianapolis Power & Light Co.*[326] "that the taxability of money received 'cannot be resolved simply by noting that [the taxpayer] derives some economic benefit' from that money."[327] In that case, the taxpayer "require[d] certain customers to make deposits with it to assure payment of future bills for electric service… [The Service] contend…[ed] that these deposits …[were] advance payments for electricity and therefore constitute[d] taxable income to …[the taxpayer]…[328] The issue there was whether these amounts "constitute[d] *advance payments* for electricity to be supplied."[329] In such event, it would be taxable. Alternatively, however, if these payments were

[319] *Id.*

[320] *Id.* at 1083 (quoting *Angelus Funeral Home,* 47 T.C. at 398).

[321] Opening Brief for Petitioner, *supra* note 7, at 31.

[322] This should be moot because, as Hyatt noted, "[t]here is voluminous evidence showing Hyatt was under a legally enforceable restriction to spend the Fund exclusively on Program-related expenses." Reply Brief for the Petitioner-Appellant at 17, *Hyatt Hotels*, No. 24-3239.

[323] Opening Brief for Petitioner, *supra* note 7, at 32.

[324] Reply Brief for Petitioner-Appellant, *supra* note 322, at 10.

[325] Opening Brief for Petitioner, *supra* note 7, at 32

[326] Commissioner v. Indianapolis Power & Light Co., 493 U.S. 203 (1990).

[327] Opening Brief for Petitioner, *supra* note 7, at 32 (quoting *Indianapolis Power & Light*, 493 U.S at 208-209).

[328] *Indianapolis Power & Light*, 493 U.S at 204.

[329] *Id.* at 207 (emphasis in the original).

considered to be a loan, it was clear that "receipt of a loan is not income to the borrower."[330]

The Supreme Court in *Indianapolis Power & Light* held these payments constituted a loan because "[a] customer who makes this deposit reflects no commitment to purchase services, and …[the taxpayer's] right to retain the money is contingent upon events outside its control."[331] While the Court did in fact indicate that "[a] commercial loan… confers an economic benefit on the recipient" and that that fact, by itself, does not make the loan taxable to the borrower, the context was whether something was a nontaxable loan or taxable advanced payment and not whether economic benefits never result in income inclusion. As such, it should not mean the trust fund doctrine's "tailored application of claim of right principles"[332] should be negated because it is inconsistent with the Supreme Court's notion of what constitutes taxable income. It is not.

Hyatt alternatively argued that "[e]ven [i]f [t]he [t]rust [f]und [d]octrine [w]ere [v]alid, [t]the Tax Court [m]isapplied [i]t."[333] Hyatt contended that the Tax Court's analysis was "untenable"[334] in reaching its determination that "given the totality of…[Hyatt's] control and discretion over the Program and the Fund and how its use of the Fund directly benefitted it…[Hyatt] has failed to establish that the trust fund doctrine …[was] applicable to it…"[335]

As to Hyatt's alleged control over the Fund, Hyatt contended that "[t]he evidence demonstrated that Hyatt's control was in fact, fettered and wholly consistent with the role and powers of a trustee."[336] Furthermore, "[t]he Tax Court's attempt to refashion the same control as a benefit for purposes of the second element of the trust fund doctrine has no doctrinal support."[337]

With respect to control of the Fund, the Tax Court's analysis appears sound. The Tax Court observed that "[a]side from access to the generalized Fund financial statements, which summarized expenses at a high categorical level, the…[third-party hotel owners] had no access to the details of what specific expenses were being paid out of the Fund."[338] Even more importantly, Hyatt "essentially retained the right to reimburse itself out of the Fund at its own discretion. In total, petitioner controlled (1) the amounts of 4% payments, miles payments, and sales payments, (2) how (and how

[330] *Id.*
[331] *Id.* at 214.
[332] *Hyatt*, 2023 T.C.M. (RIA) ¶ 2023-122 at 1082.
[333] Opening Brief for Petitioner, *supra* note 7, at 33.
[334] *Id.* at 34.
[335] *Hyatt*, 2023 T.C.M. (RIA) ¶ 2023-122 at 1088.
[336] Opening Brief for Petitioner, *supra* note 7, at 35.
[337] *Id.*
[338] *Hyatt*, 2023 T.C.M. (RIA) ¶ 2023-122 at 1085.

much of) the Fund was invested, and (3) the designation of expenses to be paid."[339]

Hyatt had asserted that the Tax Court's focus should have been: "Was Hyatt the primary -and thus 'true' - beneficiary of payments to the Fund… [and according to Hyatt,] [i]t was not…"[340] Furthermore, Hyatt contended that "[a]ny benefits…[it] received from the Fund and the Program-related purposes it serve[d] were 'incidental and secondary' within the meaning of Tax Court precedent."[341] Hyatt equated its arrangement with that of the fact-pattern in *Seven-Up. Co*."[342]

There is no question that the third-party hotel owners benefitted from the Program and the Fund and that they might well be viewed as the primary beneficiaries. Hyatt was consistent in its position that the Fund belonged to all the hotel owners (*i.e.*, third-party hotel owners and Hyatt it its capacity as a hotel owner). The custodial agreement made Hyatt the trustee.[343] If the Fund was terminated, the funds would revert to all the hotel owners.[344] As Hyatt observed, "Hyatt had an ongoing [legally enforceable] obligation to use Fund assets for nothing other than two types of Program-related expenditures: (1) payments to hotel owners when guests redeemed points, and (2) the costs of operating the fund."[345] In short, Hyatt's position that the trust fund doctrine should apply to it is certainly not implausible.

On the other hand, what Hyatt obtained from the Program, and its control over the Fund, could hardly be described as "incidental." As noted above, because of Hyatt's ownership "of 20%-25% of the Hyatt-branded hotels,…having Program advertising paid for out of the Fund effectively shifted to the Fund the cost of at least some of the advertising that…[Hyatt] otherwise would have paid for to generate stays at its owned hotels…[, and thus provided] a direct benefit to…[Hyatt]."[346] Additionally, the Tax Court pointed out that the Program and Fund enhanced goodwill associated with the Hyatt name and trademark, and that "the long-term success of a chain hospitality business like…[Hyatt's] depends significantly upon maintaining and increasing the goodwill that customers associate with the Hyatt brand."[347]

As discussed *supra*, the Tax Court found that "[n]ot only did customer goodwill generate repeat hotel stays and thus direct and indirect revenue

[339] *Id.*

[340] Opening Brief for Petitioner, *supra* note 7, at 36 (quoting *Angelus Funeral Home*, 47 T.C. at 395, referring to the pre-September 1961 Pre-Need Funeral Plan Agreement).

[341] *Id.* at 36 (quoting *Angelus Funeral Home*, 47 T.C. at 395).

[342] *Id.*at 37

[343] *Id.* at 10-11.

[344] Reply Brief for Petitioner-Appellant, *supra* note 322, at 17.

[345] Opening Brief for Petitioner, *supra* note 7, at 26.

[346] *Hyatt*, 2023 T.C.M. (RIA) ¶ 2023-122 at 1086.

[347] *Id.*

for…[Hyatt,] but it also granted …[Hyatt] additional contractual leverage in its role as prospective franchisor or manager for hotel properties."[348] That is, Hyatt "could rely on the increased goodwill associated with the Hyatt brand in negotiating higher royalties, management fees, and other fees in new agreements reached with existing or prospective…[third-party hotel owners]—a direct benefit to it."[349] With respect to the Program's boosting the worth of Hyatt's name, trademark and goodwill, as the Tax Court observed, this will always benefit Hyatt but will advantage third-party hotel owners only so long as they continue the contract with Hyatt, and even then will "presumptively be accounted for in higher contract fees when the time for renewal…[occurs]."[350] The Tax Court indicated that "[t]his same rationale holds true…[for] the Program member database."[351]

As discussed above, the Tax Court noted that another benefit to Hyatt from its control over the Fund and the Program's terms and conditions was its ability to modify "the timing and amounts of compensation payments out of the Fund to hotel owners."[352] The court pointed out that Hyatt instituted Program "changes [that] decreased the number of compensation payments going back out to the…[third-party hotel owners] and increased the amount of the Fund available for whatever…[Hyatt] designated as advertising and administrative costs."[353] In summary, Hyatt's claim that it only received "incidental and secondary" benefits from the Program and Fund was at least partially incorrect. These benefits were clearly not just "incidental."

What about Hyatt's assertion that if benefits to it is a factor in determining whether Hyatt could avail itself of an exclusion to gross income from the Fund, pursuant to the trust fund doctrine, the proper test in this regard was whether "Hyatt [was] the primary—and thus 'true'—beneficiary of payments to the Fund ?"[354] To be sure, the Tax Court in *Angelus* said, in its discussion of the pre-September 1961 Pre-Need Funeral Plan, that "[i]t is clear, from the facts of the arrangement under the earlier form of the contract [*i.e.*, the pre-September 1961 version of the plan], that applicants were the true beneficiaries of the trusts which were created."[355] The next sentence in that opinion, however, stated that "[t]he fact that some incidental and secondary benefit accrued to petitioner is of no moment."[356] Thus, that first sentence was merely indicating that under the pre-September 1961 form of

[348] *Id.* at 1087.
[349] *Id.*
[350] *Id.*
[351] *Id.* at 1088.
[352] *Id.*
[353] *Id.*
[354] Opening Brief for Petitioner, *supra* note 7, at 36 (quoting *Angelus Funeral*, 47 T.C. at 395).
[355] *Angelus Funeral Home,*47 T.C. at 395.
[356] *Id.*

the plan, it was clear the customers were the ones who were the clear primary beneficiaries of that fund, and Angelus' benefits were "incidental and secondary." Accordingly, the proper test is still whether Hyatt's benefits were "incidental and secondary," and even if Hyatt's benefits might well be described as "secondary," they were certainly not "incidental."

What about Hyatt's assertion that "[t]he benefits that flowed to Hyatt from administering the Fund for Program-related purposes on behalf of hotel owners were virtually identical to the benefits that flowed to Seven-Up from payments it made for national advertising on behalf of 7-Up bottlers…[?]"[357] Should the *Seven-Up Co.* decision cause Hyatt to prevail?

The Tax Court acknowledged that the *Hyatt* and *Seven-Up Co.* fact-patterns, "unlike much of our collective fund precedent, [is similar] in a key respect. In both this case and *Seven-Up Co.*, the entity holding the fund is the primary entity/franchisor itself or a subsidiary of that primary entity/franchisor, operating as a for-profit corporation."[358] As noted *supra*, the Tax Court in *Hyatt* stated that in *Seven-Up Co.,* "[w]e thus found that the increased revenue attributable to collective advertising flowed first to the various third-party bottlers that sold 7-Up to the advertised-to public, with a secondary 'corresponding increase' then flowing to the taxpayer as the bottlers purchased increased amounts of extract to meet customer demand."[359] Thus "the taxpayer's revenue increased from the use of the collective advertising fund *only* if third party bottlers' sales increased first, and we ultimately concluded that the taxpayer did not directly gain or profit from receipt of the payments constituting the fund."[360]

In distinguishing *Seven-Up Co.* from the case at bar, the Tax Court, in *Hyatt,* emphasized Hyatt's role as owner of many of the Hyatt branded hotels. The Tax Court observed that, unlike *Seven-Up Co.*, "[i]ncreased revenue would also flow to …[Hyatt] indirectly, through the gross-revenue-based management and royalty fees charged to the…[third-party hotel owners]."[361] The *Hyatt* Tax Court further indicated, that "while these latter management and royalty fees resemble the secondary 'corresponding increase' in *Seven-Up. Co. . .*, the increased revenue to …[Hyatt] in its role as hotel owner is anomalous."[362] The court concluded that "[t]his direct benefit weighs against a conclusion that …[Hyatt] did not have a beneficial interest in the Fund, particularly considering…[Hyatt's] control over the content of the Program advertising itself."[363]

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[357] Opening Brief for Petitioner, *supra* note 7, at 37.
[358] *Hyatt*, 2023 T.C.M. (RIA) ¶ 2023-122 at 1085.
[359] *Id.* at 1086.
[360] *Id.* (emphasis in the original).
[361] *Id.*
[362] *Id.*
[363] *Id.*

While apparently not considered by the *Hyatt* Tax Court in holding for the Service, another major factual difference with the Seven-Up fund was that the latter was apparently bottler instituted, voluntary, and to some extent run by the bottlers, and that only because "the 7-Up bottlers had no central organization of their own…[did] the [advertising agency] J. Walter Thompson recommend that 7-Up bottlers make their payments to… [Seven-Up Co.] rather than to it, because it had no facilities for handling the bottler's contributions."[364]

The 7-Up bottlers decided on the calculation of the fee to participate in the advertising campaign.[365] While there was peer pressure to do so, the 7-Up "bottlers had the choice of signing the letter agreeing to participate in the plan or refusing to sign it."[366] According to the Tax Court, J. Walter Thompson "regarded the 7-Up bottlers as its client…"[367] In short, the 7-Up fund was far different from the mandatory and Hyatt-driven Program and Fund.

While the forgoing perhaps is not directly relevant to the second criterion for the trust doctrine to apply, *i.e.*, whether the taxpayer did "not profit, gain or benefit from spending the funds…"[368] in the trust, at the very least the optics of the *Hyatt* and *Seven-Up Co.* programs are distinctly different. Thus, while the direct ownership by Hyatt of 20%-25% of the hotels covered by the Program and Fund is, by itself, more than enough to distinguish *Seven-Up Co.* from *Hyatt*, the above further adds to their dissimilarities.

As to the Seventh Circuit's embrace of Hyatt's assertion "that 'the claim of right doctrine' is a standalone reason why it was 'entitled to exclude the Program revenue from gross income'"[369] what was the justification for not applying "a more tailored application of claim of right principles…"[370] to a trust fund fact-pattern? Its reasoning was that "the claim of right doctrine provides a broader basis for exclusion than the trust fund doctrine."[371] Shouldn't analysis of similar fact patterns by other courts as to this "tailored application"[372] of the claim-of-right doctrine control?

The Seventh Circuit's principal explanation for not in practice employing the concept that the claim-of-right-doctrine should be viewed as "a more tailored application of claim of right principles"[373] was *Indianapolis Power & Light*. As addressed above, the context of *Indianapolis Power & Light* was

[364] *Seven-Up Co.,* 14 T.C. at 969.
[365] *Id.* at 968-69.
[366] *Id.* at 970.
[367] *Id.* at 973.
[368] *Hyatt*, 2023 T.C.M. (RIA) ¶ 2023-122 at 1081.
[369] Opening Brief for Petitioner, *supra* note 7, at 29.
[370] *Hyatt*, 2026 U.S. App. LEXIS 11421 at *11.
[371] *Id.* at *12.
[372] *Id.* at *11.
[373] *Id.* at *8.

whether amounts received by the taxpayer was in effect a nontaxable loan serving as security for services to be rendered or a taxable advanced payment and not a *Hyatt* like fact-pattern where the *raison d'etre* of the Fund was to provide substantial benefits to both Hyatt as well as third-party Hyatt-branded hotel owners, and not as in *Indianapolis Power & Light* to serve as collateral. Thus, the Seventh Circuit's reliance on this case seems ill-chosen.

With respect to the Ninth Circuit decision in *Angelus Funeral Home*, which was cited by the Tax Court for its finding that "[u]nder the trust fund doctrine, any benefit inuring to the taxpayer from use of a purported trust fund cannot be more than 'incidental and secondary[,]'"[374] the Seventh Circuit asserted that the Tax Court was mistaken in interpreting the decision "that a more-than-incidental benefit is sufficient to decide that funds are income." [375] Instead, the Seventh Circuit indicated that "[t]he Ninth Circuit found not just benefit to the taxpayer, but also that the taxpayer's control over the funds—its '*absolute power* to benefit itself,' using the funds 'whenever it wished, subject only to limitations of purpose'—made it liable for taxation."[376] While this analysis is disputable, it should prove to be academic given Hyatt's considerable power and direction over the Fund.

Even if the Seventh Circuit and Hyatt were correct that the Tax Court should have addressed the claim-of-right doctrine as a stand-alone theory apart from the trust fund doctrine analysis, a position this writer does not subscribe to, a strong argument can be made that the significant economic benefits derived by Hyatt from the Fund, coupled with its control, satisfies the "claim of right" test, *i.e.*, "[w]hen a taxpayer acquires earnings, lawfully or unlawfully, without the consensual recognition, express or implied, of an obligation to repay and without restriction as to their disposition, … '[it] has received income…'"[377] The substantial financial value derived by Hyatt from the Program and the Fund should meet the Supreme Court standard in *Commissioner v. Glenshaw Glass Co.*[378] of what is taxable gross income, *i.e.*, "undeniable accessions to wealth, clearly realized, and over which the taxpayers have complete dominion."[379]

The Seventh Circuit's analysis and decision to vacate the Tax Court's determination on income includability is certainly dubious. It should have affirmed the Tax Court. This should, however, prove moot, assuming the Tax Court, on remand, holds, as it should, that Hyatt has a gross income inclusion from the Fund because of the considerable economic benefit of the

[374] *Hyatt*, 2023 T.C.M. (RIA) ¶ 2023-122 at 1083.
[375] *Hyatt*, 2026 U.S. App. LEXIS 11421 *at* *13.
[376] *Id.,* citing *Angelus Funeral Home,* 407 F.2d at 213 (emphasis in original).
[377] *James*, 366 U.S. at 219 (quoting *North American Oil,* 286 U.S.at 424).
[378] Commissioner v. Glenshaw Glass Co., 348 U.S. 426 (1955).
[379] *Id.* at 432.

Fund to Hyatt coupled with its significant control over it, and assuming this determination is affirmed if appealed.

VI. Conclusion

The Tax Court accurately characterized "[t]he trust fund doctrine…as a more tailored application of claim of right principles…"[380] While the Seventh Circuit agreed in principle with this concept, it nevertheless determined that Hyatt could still have been able to exclude the income under the claim-of-right doctrine. The Seventh Circuit should have adhered to the Tax Court's analysis on this point and affirmed that Hyatt was subject to income inclusion from the Fund. The ultimate outcome should still be the same given that the Fund provided considerable economic benefit, in keeping with its purpose, to Hyatt (as well as third-party Hyatt-branded hotel owners) coupled with Hyatt's considerable control over the Fund.[381]

[380] 2023 T.C.M. (RIA) ¶ 2023-122 at 1082.

[381] This Article is current through June 30, 2026, but may not fully reflect future developments in the case.