IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

HALLIBURTON COMPANY, Plaintiff, v. UNITED STATES OF AMERICA, Defendant.	CIVIL NO: 4:24-cv-02149

UNITED STATES' NOTICE OF RECENT AUTHORITY RELATING TO THE UNITED STATES' MOTION TO DISMISS COUNTS TWO AND THREE OF PLAINTIFF'S COMPLAINT (DKT. NO. 29)

The United States files this Notice of Recent Authority relating to the issues raised in the United States' Motion to Dismiss Counts Two and Three of Plaintiff's Complaint currently pending with the Court (Dkt. Nos. 29 and 32) and Halliburton's Response (Dkt. 31). The United States brings to the Court's attention the case of *Trail King Indus., Inc. v. United States*, No. 4:24-CV-04164-RAL, 2025 WL 2084112, (D.S.D. July 24, 2025). A copy of the case is attached for the Court's convenience.

Trail King involved a federal excise tax on the manufacture and sale of trailers used on highways and a regulation conditioning a resale exemption on the receipt of the certificate to the time of the original sale. Relevant to this matter, after the IRS denied the taxpayer's administrative refund claim and after an IRS Appeals did not overturn the denial of the refund claim, Trail King filed its refund suit. Like Halliburton in this case

(Dkt. 1, Counts Two and Three), Trail King challenged, for the first time, the validity of a regulation arguing Treasury exceeded its authority by promulgating the regulation.

The government filed a motion to dismiss Trial King's suit for failure to state a claim under Federal Rules of Civil Procedure 12(b)(6). Regarding the argument that the regulation at issue was invalid, the government argued that Trail King had failed to challenge the validity of the regulation in its administrative refund claim and was thus precluded from raising it in its refund suit under the variance doctrine, which prevents a taxpayer from raising a matter in a refund suit if the grounds and facts were not sufficiently raised in the underlying refund claim.

The district court treated the government's Rule 12(b)(6) motion concerning its variance argument as a motion to dismiss for lack of jurisdiction under Rule12(b)(1), pointing to cases where the courts have treated the regulatory requirement to file a refund claim with reference to the grounds and facts as a jurisdictional requirement. The court then noted that none of the grounds asserted in Trail King's refund claim challenged the regulation's validity and thus failed to meet the requirement that it "must set forth in detail each ground upon which a credit or refund is claimed and facts sufficient to apprise the Commissioner of the exact basis thereof." Treas. Reg. § 301.6402–2(b)(1).

Like Halliburton in this case (Dkt. 31 at 15-16), Trail King also argued that the variance doctrine should not apply because Treasury promulgated regulations (eventually finalized) that effectively limited the ability of IRS Appeals to consider issues concerning the validity of guidance, including regulations, unless there was an "unreviewable decision from a Federal court invalidating the regulation as a whole or the provision in the regulation that the taxpayer is challenging." Trail King noted that the Internal Revenue Manual also addresses and limits Appeals' ability to hear challenges concerning the validity of regulations.

According to Trail King, these limits meant that "the IRS had preemptively rejected Trail King's invalidity argument because it was prohibited by its own rules from considering that issue." That preemptive rejection, according to Trail King, meant that the IRS had constructively considered the invalidity ground that it explicitly raised in the refund suit and should preclude the court from applying the variance doctrine to dismiss the challenge to the regulation.

The court disagreed, noting but "setting aside" that the proposed regulations and IRM provisions did not have the force of law. More importantly, the opinion notes that the variance doctrine is directed not at arguments raised at Appeals, but at arguments made to the IRS in a taxpayer's refund claim:

> The proposed rule and Internal Revenue Manual provisions cited by Trail King limit only the Appeals Office from considering challenges to the validity of Treasury regulations. They of course do not limit a district court's ability to hear a challenge to a Treasury regulation's validity. The only limitation to a district court's ability to hear a refund claim is that all grounds for relief be raised with the IRS in the first instance. Treas. Reg. section 301.6402-2(b). Accordingly, the IRS did not "preemptively reject[ ] Trail King's invalidity argument," and Trail King was required to raise its challenge to the validity of Treas. Reg. section 48.4052-1 in the first instance with the IRS. It did not do so.

Trail King Indus., Inc. v. United States, 2025 WL 2084112, at *10.

Finally, Like Halliburton in this case (Dkt. 31 at 17-18), Trail King argued that the Supreme Court decided *Loper Bright Enterprises Inc. v. Raimondo*, 603 U.S. 369 (2024), after Trail King submitted its refund claim. As such, it argued that the court should not apply the variance doctrine given that it could not have raised a *Loper Bright* challenge at the time it filed its refund claim. The court rejected this argument:

> Trail King argues that because the Supreme Court issued *Loper Bright* after Trail King filed its Refund Claims, this Court should decline to apply the variance doctrine. Doc. 25 at 18–19. Trail King is challenging the Treasury's authority to promulgate Treas. Reg. § 48.4052-1. Despite the fact that *Loper Bright* issued after Trail King filed its Refund Claims, Trail King was not precluded from challenging the Treasury's authority to issue Treas. Reg. § 48.4052-1 when it filed the Refund Claims. The majority in *Loper Bright* overruled *Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984), thereby discarding a 40-year history under the *Chevron* doctrine of giving deference to federal agencies in interpreting statutes they administer and instead clarifying that federal courts possessed unfettered authority to resolve ambiguities in such statutes. *Loper Bright* did not create a new claim for litigants like Trail King to challenge agency authority to promulgate regulations. Indeed, even during the *Chevron* era, courts found agencies exceeded their statutory authority in promulgating certain regulations. *See Util. Air Regul. Grp. v. EPA,* 573 U.S. 302, 333 (2014) (applying *Chevron* doctrine and holding that the EPA "exceeded its statutory authority" in promulgating the Tailoring Rule). Rather, *Loper Bright* changed how courts should evaluate already permissible challenges to the validity of regulations. Trail King could have challenged Treas. Reg. § 48.4052-1 as exceeding the Treasury's statutory authority when it filed the Refund Claims. It did not do so. Thus, under the variance doctrine, this Court now lacks the jurisdiction to hear Trail King's challenge to the Treasury's authority to promulgate Treas. Reg. § 48.4052-1.

Trail King Indus., Inc. v. United States, 2025 WL 2084112, at *10.

/s/ *Jonathan L. Blacker*

JONATHAN L. BLACKER
Senior Litigation Counsel
Texas State Bar No. 00796215
jonathan.blacker2@usdoj.gov
(214) 880-9765
IGNACIO PEREZ DE LA CRUZ
Trial Attorney
Attorney-in-Charge
Massachusetts Bar No. 672618
SDTX No. 2433910
Ignacio.PerezdelaCruz@usdoj.gov
(214) 880-9759
U.S. Department of Justice
Tax Division
717 N. Harwood, Suite 400
Dallas, Texas 75201
(214) 880-9742 (Fax)

ATTORNEYS FOR THE UNITED STATES

CERTIFICATE OF SERVICE

I, Jonathan L. Blacker, certify that on September 12, 2025, I electronically filed the foregoing document using the ECF system, which will send notification to all counsel of record.

/s/ *Jonathan L. Blacker*
JONATHAN L. BLACKER