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Federal Circuit: Foreign tax credits under Canadian and French tax treaties cannot offset net investment income tax

The U.S. Court of Appeals for the Federal Circuit today held in two decisions that foreign tax credits available under income tax treaties with Canada and France cannot be used to offset the net investment income tax (NIIT) imposed under section 1411. In both cases, the court concluded that the relevant treaty provisions are subject to limitations in the Internal Revenue Code, including rules that restrict foreign tax credits to taxes imposed under chapter 1 of the Code. Because the NIIT is imposed under chapter 2A, the court held that the credits could not be applied against NIIT liability.

In both cases, the court reversed taxpayer-favorable judgments of the Court of Federal Claims and held that the treaties do not provide an independent basis for applying foreign tax credits against the NIIT.

U.S.-Canada tax treaty

The taxpayer, a U.S. citizen residing in Canada, paid Canadian income tax on gain from the sale of Canadian real property and also owed U.S. NIIT on the same gain. The taxpayer argued that Article XXIV of the U.S.-Canada income tax treaty provided a foreign tax credit that could offset the NIIT.

The Federal Circuit disagreed, holding that the treaty's foreign tax credit provisions are subject to the treaty's requirement that credits be allowed in accordance with, and subject to the limitations of, U.S. law. The court concluded that sections 26(b), 27, and 901 limit foreign tax credits to taxes imposed under chapter 1 and therefore do not permit those credits to offset NIIT liability.

The case is *Estate of Paul Bruyea v. United States*, No. 2025-1563 (Fed. Cir. Aug. 31, 2026). Read the court's opinion (27 pages).

U.S.-France tax treaty

The taxpayers, U.S. citizens residing in France, paid French income tax and U.S. NIIT on gain from the sale of stock in a French company. They argued that Article 24 of the U.S.-France income tax treaty entitled them to foreign tax credits that could be used to offset the NIIT.

Relying in part on its analysis in *Bruyea*, the Federal Circuit held that Article 24's foreign tax credit provisions are likewise subject to the treaty's U.S. law limitation. The court rejected the argument that the provision applicable to U.S. citizens resident in France operates independently of those Code limitations and concluded that foreign tax credits under the treaty may not be used to offset NIIT liability.

The case is *Christensen v. United States*, No. 2024-1284 (Fed. Cir. Aug. 31, 2026). Read the court's opinion (15 pages).

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