



# TaxNewsFlash

United States



No. 2023-261  
July 27, 2023

## Third Circuit: Legal expenses for defending patent infringement suits are deductible

The U.S. Court of Appeals for the Third Circuit today affirmed the U.S. Tax Court holding that a generic drug manufacturer can deduct as ordinary and necessary business expenses legal fees incurred in defending itself against patent infringement suits.

The case is: *Mylan, Inc. v. Commissioner*, No. 22-1193 (3<sup>rd</sup> Cir. July 27, 2023). Read the Third Circuit's [decision](#) [PDF 231 KB]

### Summary

The Tax Court previously held that the legal expenses incurred by the taxpayer (a U.S. manufacturer of brand name and generic pharmaceutical drugs) to defend itself against patent infringement suits were deductible as ordinary and necessary business expenses. 156 T.C. No. 10 (April 27, 2021). Read [TaxNewsFlash](#) [PDF 89 KB]

The IRS appealed, arguing that the legal fees ought to be understood as a cost of acquiring approval from the U.S. Food and Drug Administration (“FDA”) to market the taxpayer’s generic drugs and should therefore be treated as capital expenditures.

The Third Circuit held the Tax Court correctly determined that patent litigation is distinct from the FDA’s scientific review process and not actually facilitative of generic drug approval.

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