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U.S. Tax Court: Filing deadline under section 6234(a) held nonjurisdictional in BBA partnership case

The U.S. Tax Court yesterday held, in a case of first impression, that the 90-day deadline in section 6234(a) for filing a petition to challenge a Final Partnership Adjustment (FPA) under the Bipartisan Budget Act of 2015 (BBA) partnership audit regime is not jurisdictional.

The case is: *Big Apple Tompkins Realty LLC v. Commissioner*, 167 T.C. No. 7 (August 5, 2026). Read the Tax Court's opinion.

Summary

The IRS issued and mailed an FPA dated August 11, 2022, to the partnership and its partnership representative for tax year 2018. The partnership filed its Tax Court petition on November 13, 2023. The IRS moved to dismiss the case for lack of jurisdiction, asserting that the petition was filed after the 90-day period prescribed by section 6234(a).

The court noted that it had not previously considered which party should bear the burden of proving the mailing date of an FPA. Looking to the court's deficiency case law and precedent applying the TEFRA audit provisions (the procedures in existence prior to the BBA), the court concluded that the IRS had the burden of proof as to the FPA's mailing date. Although the IRS failed to produce a signed USPS Form 3877 (the form typically used to establish a mailing date), the IRS was able to present other evidence that established the FPA was properly issued and mailed on August 11, 2022. Because the petition was filed more than 90 days after August 11, 2022, the court found that the petition was not timely filed.

However, even though the court found the petition untimely, it proceeded to determine as a matter of first impression whether the court nevertheless had jurisdiction to readjust the partnership adjustments determined in the FPA. After analyzing the text, context and historical treatment of section 6234(a), the court determined that Congress did not clearly state that the 90-day filing deadline is jurisdictional. Accordingly, the untimely petition did not deprive the court of jurisdiction, and the court denied the IRS's motion to dismiss for lack of jurisdiction.

The court reserved judgment on whether the section 6234(a) deadline may be subject to equitable tolling, stating that the issue would need to be raised in an appropriate manner.

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KPMG observation

The court's holding in this case contrasts sharply with its decision in *North Wall Holdings, LLC v. Commissioner*, 165 T.C. No. 9 (October 21, 2025) (read *TaxNewsFlash*). In *North Wall Holdings*, the Tax Court held that the TEFRA petition period under former section 6226 is not jurisdictional and leaves no room for equitable tolling. The court found the complex TEFRA statutory scheme, its highly detailed exceptions to filing deadlines, and the potential disruption to the assessment process each favored a finding that the TEFRA petition period was jurisdictional. The opinion in *Big Apple* contrasts the complexity of the TEFRA scheme with the centralization of the BBA regime.

- First, the court concludes that under BBA there is a singular party to the proceeding—the partnership via the partnership representative—and therefore a single petition may be filed, as compared to TEFRA where any notice partner could file a petition to challenge the IRS adjustments.

- Second, the court notes the absence in BBA of the types of filing deadline exceptions that existed under TEFRA.

- Third, the court finds that equitable tolling of the BBA petition period would not lead to the "administrative paralysis" that concerned the court in *North Wall Holdings*. Specifically, while the court acknowledges different partners may bear the economic burden of a BBA imputed underpayment depending on when the court's decision becomes final, this result flows from the statute itself. By contrast, permitting equitable tolling for the TEFRA petition period could allow one partner's circumstances to disrupt the assessment process for all partners in a TEFRA partnership, a result that in the court's view would "grind to a halt" the tax administration of partnership adjustments.

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