

United States Tax Court

167 T.C. No. 11

KINGS ROAD PROPERTY, LLC, KINGS ROAD MANAGER, LLC,
PARTNERSHIP REPRESENTATIVE,
Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent

Docket No. 10272-25.

Filed September 21, 2026.

P is a partnership subject to the partnership audit and litigation procedures of the Bipartisan Budget Act of 2015, Pub. L. No. 114-74, § 1101, 129 Stat. 584, 624–38 (codified as amended at I.R.C. § 6221–6241). R mailed a Notice of Proposed Partnership Adjustment (NOPPA) to P. P’s counsel anticipated that a Final Partnership Adjustment (FPA) would follow. After some time had passed, P’s counsel contacted R to inquire whether an FPA had been mailed. R informed P’s counsel that an FPA had not been mailed. Beginning with the date the NOPPA was mailed, P’s counsel calculated the deadline by which R had to issue an FPA. *See* I.R.C. § 6235. From that date, P’s counsel calculated the deadline to file a petition. *See* I.R.C. § 6234(a). P’s counsel filed a Petition before that deadline.

Notwithstanding R’s representation that an FPA had not been mailed, R had mailed an FPA to P, P’s partnership representative, and P’s former counsel nearly a month before the deadline for mailing. Because R had mailed the FPA before the deadline for mailing, the deadline for filing a petition passed before the date that P’s counsel had calculated. P’s Petition was untimely.

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R filed a Motion to Dismiss for Lack of Jurisdiction. In response, P asserted equitable tolling. P also filed a Cross-Motion to dismiss arguing that P was prejudiced by various alleged defects in R's mailing of the FPA.

Held: The deadline to file a petition under I.R.C. § 6234(a) is not jurisdictional. *Big Apple Tompkins Realty LLC v. Commissioner*, No. 19040-23, 167 T.C. (Aug. 5, 2026), followed.

Held, further, the deadline to file a petition under I.R.C. § 6234(a) may be subject to equitable tolling.

Held, further, for equitable tolling to apply, the burden is on the petitioner to establish (1) that it pursued its rights diligently and (2) that extraordinary circumstances outside of its control prevented it from filing on time.

Held, further, P met its burden to establish that equitable tolling applies.

Held, further, R's Motion to Dismiss for Lack of Jurisdiction will be denied.

Held, further, R's mailing of the FPA was not defective.

Held, further, even if R's mailing was defective, the application of equitable tolling mitigated any prejudice P might have suffered.

Held, further, P's Cross-Motion to Dismiss for Lack of Jurisdiction will be denied.

Kristin Martin Centeno, Ronald A. Levitt, Olla F. Jaraysi, Gregory P. Rhodes, Michelle A. Levin, Sarah E. Green, Sidney W. Jackson IV, Emily C. Ellis, Carneil D. Wilson, and Ryder A. Winborn, for petitioner.

Danielle P. Costigan, Erin A. Schaffer-Williams, and Courtney S. Bacon, for respondent.

OPINION

BUCH, *Judge*: Kings Road Property, LLC (Kings Road), the petitioner in this case, is a limited liability company that is treated as a partnership for federal income tax purposes. It is subject to the partnership audit and litigation procedures enacted by the Bipartisan Budget Act of 2015 (BBA), Pub. L. No. 114-74, § 1101(a), (c), and (g), 129 Stat. 584, 625, 638.¹ The Commissioner examined Kings Road's 2020 return and eventually issued a Notice of Final Partnership Adjustment (FPA). Kings Road filed an untimely Petition.

Pending before the Court are the Commissioner's Motion to Dismiss for Lack of Jurisdiction and petitioner's Cross-Motion. The Commissioner's Motion argues that Kings Road's Petition was untimely pursuant to section 6234(a).² In response, Kings Road argues that section 6234 is not jurisdictional, that equitable tolling applies, and that the Court should treat the Petition as timely. Kings Road further argues that the FPA is invalid because it was not properly mailed, because the Commissioner failed to exercise due diligence in mailing, and because the FPA was signed by someone who was not properly appointed under the Federal Vacancies Reform Act of 1998 (VRA), enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. No. 105-277, div. C, § 151(b), 112 Stat. 2681, 2681-611 (codified as amended at 5 U.S.C. § 3345(a)).

Background

The following facts are derived from the parties' filings to date. The facts are stated solely for purposes of ruling on the Motions and not as findings of fact in this case. *See Sundstrand Corp. v. Commissioner*, 98 T.C. 518, 520 (1992), *aff'd*, 17 F.3d 965 (7th Cir. 1994).

Kings Road is a limited liability company with its principal place of business in Georgia. Kings Road Manager, LLC, is the partnership

¹ Because the BBA amended the Internal Revenue Code by striking the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub. L. No. 97-248, §§ 401–407, 96 Stat. 324, 648–71, and enacting new provisions using many of the same Code section numbers, when referring to such Code sections, we will parenthetically indicate to which procedures, BBA or TEFRA, we are referring, where the context may not otherwise be clear.

² Unless otherwise indicated, statutory references are to the Internal Revenue Code, Title 26 U.S.C. (I.R.C. or Code), in effect at all relevant times. All monetary amounts are shown in U.S. dollars and rounded to the nearest dollar.

representative for Kings Road. Both Kings Road and its partnership representative have the same address of 100 Bull Street, Suite 212, Savannah, Georgia 31401.

On October 14, 2021, the Internal Revenue Service (IRS) received Kings Road's 2020 Form 1065, U.S. Return of Partnership Income. On that return, Kings Road claimed a charitable contribution deduction for a conservation easement with a reported value of \$30,570,000.

The Commissioner examined Kings Road's 2020 return. On May 24, 2024, the Commissioner mailed a Notice of Proposed Partnership Adjustment (NOPPA) to Kings Road and its partnership representative at "100 Bull Street, Ste 212." The NOPPA proposed to disallow the charitable contribution deduction, proposed an imputed underpayment of \$11,310,900, and proposed an accuracy-related penalty of \$4,395,748. Kings Road and its partnership representative both received the NOPPA. Kings Road did not submit a modification request. *See* I.R.C. § 6225(c).

After receiving the NOPPA, Kings Road retained new counsel. The new counsel filed Forms 2848, Power of Attorney and Declaration of Representative, with the Centralized Authorization File (CAF) Unit. The CAF Unit input the new counsel into the CAF system on August 27, 2024.

Her client's having received a NOPPA, counsel to Kings Road kept her eye out for an FPA and the deadline to file a petition in response. Under section 6235(a)(3), the Commissioner has 330 days after the issuance of a NOPPA to issue an FPA (if there is no modification request). Kings Road's counsel calculated 330 days from the date of the NOPPA (May 24, 2024) to be April 19, 2025. Because that was a Saturday, she added two days to conclude that the FPA must be mailed by April 21, 2025. *See* I.R.C. § 7503. From the mailing of the FPA, a taxpayer has 90 days to file a petition in the Tax Court. I.R.C. § 6234(a). Kings Road's counsel calculated the deadline to file a petition in the Tax Court if the FPA was sent on April 21, 2025, to be July 20, 2025, a Sunday. She marked her calendar and waited.

Neither Kings Road, nor its partnership representative, nor its newly retained counsel received an FPA. On May 21, 2025, after the FPA should have been sent, Kings Road's counsel called the IRS to inquire whether an FPA had been mailed. The agent informed Kings Road's counsel that "there had been no activity on the Kings Road account and

that no notices had been sent out since [the] power of attorney was put on file in August of 2024.” Kings Road’s counsel also contacted the partnership representative to have it recheck its files to determine whether it had received an FPA. The partnership representative’s designated individual stated that he did not receive an FPA; he nonetheless rechecked the mailbox and files to confirm that no FPA had been received. Additionally, Kings Road’s counsel obtained an account transcript for Kings Road from the Tax Pro account on irs.gov, which did not show an issuance of an FPA or any determination of additional tax.

Despite not having received an FPA, Kings Road, through its partnership representative, filed a protective Petition on July 9, 2025. In its Petition, Kings Road argued that, because the Commissioner had not issued an FPA before the deadline in section 6235(a), any forthcoming FPA would be untimely, and in the alternative, challenged the underlying adjustments if an FPA had been sent.

Much to the surprise of Kings Road and its counsel, the Commissioner had mailed an FPA to Kings Road and its partnership representative. The FPA, dated March 25, 2025, determined an imputed underpayment of \$11,310,900 resulting from the disallowance of a noncash charitable contribution deduction. The FPA also determined an accuracy-related penalty for an underpayment of tax required to be shown on a return attributable to a gross valuation misstatement under section 6662(a), (b)(3), and (h). In the alternative, the FPA determined an accuracy-related penalty for either negligence, a substantial understatement, or a substantial valuation misstatement under section 6662(a) and (b)(1), (2), or (3), respectively. *See* I.R.C. § 6662(c), (d), and (e).

A Technical Services Passthrough Coordinator (TSPC) at the IRS had mailed the FPA package by certified mail. The U.S. Postal Service (USPS) Forms 3877, Firm Mailing Book For Accountable Mail, lists two certified mail tracking numbers, along with Kings Road and its partnership representative’s names and addresses. That information also matched the information on both FPAs. USPS tracking histories show that the FPAs were delivered to the partnership representative on April 2, 2025, and to Kings Road on April 3, 2025. Notwithstanding that tracking history, both FPA packages were returned to the issuing office in April 2025. The envelopes were marked “RETURN TO SENDER NOT DELIVERABLE AS ADDRESSED UNABLE TO FORWARD.” The IRS also mailed the FPA package to Kings Road’s former counsel whose Form 2848 dated back to October 2022. The IRS did not mail an FPA

package to the new counsel whose Form 2848 was on file when the FPA package was mailed. The case activity record of the TSPC notes that the TSPC called the former counsel after the FPA packages had been returned as undeliverable to ask whether there was an address change. The notes of that call state that the former counsel called back to inform the IRS that she no longer represented the partnership representative, that she was unaware of an address change, and that she had received the FPA and forwarded it to the new counsel.³

The Commissioner filed a Motion to Dismiss for Lack of Jurisdiction. The Commissioner argues that the Petition was not filed within the 90 days prescribed by section 6234(a). The Commissioner argues he issued the FPA on March 25, 2025, to Kings Road and its partnership representative at their last known addresses. Counting forward from that date, the 90-day period for timely filing a petition expired on June 23, 2025. Kings Road filed its Petition on July 9, 2025, which was 106 days after the FPA was mailed and 16 days after the deadline to file a petition under section 6234(a).

Kings Road objected to the Commissioner's Motion, arguing that section 6234(a) is a claims processing rule and, under these facts, the deadline by which to file a petition should be equitably tolled.

Kings Road filed a Cross-Motion to Dismiss for Lack of Jurisdiction. In its Motion Kings Road argues that the FPA is invalid because it was not sent to the last known address, that the FPA was not properly mailed and the Commissioner should be equitably estopped from claiming that it was properly mailed, that the Commissioner failed to exercise due diligence, and that the FPA "was issued by an individual who was not properly appointed under the Federal Vacancies Reform Act." Kings Road argues that the FPA was not sent to the last known address because it was sent to "STE 212" instead of "Suite 212" and that "when a notice with a minor address error is returned undeliverable, courts have consistently held the notice invalid." Kings Road also argues that the Commissioner was not diligent in sending the FPA because it was returned as undelivered and not sent to the then-current counsel; thus "[d]eclaring the FPAs null and void is the appropriate remedy."

³ Kings Road argues the activity record is contradicted by call logs and a declaration from its paralegal. Kings Road contrasts the TSPC's call log with a declaration of the new counsel's paralegal, who was purportedly informed by the former counsel that she never received an FPA. Kings Road requests an evidentiary hearing regarding the accuracy of the TSPC's activity record. We decline this invitation because the Court need not resolve this dispute to decide the issues presented.

Because of this purported lack of diligence, Kings Road argues that the Commissioner should be equitably estopped from asserting that the FPA packages were properly mailed. Lastly, Kings Road argues that acting Commissioner Melanie Krause lacked the authority to sign the FPA because she was not appointed by the President in accordance with 5 U.S.C. § 3345(a)(2) and (3).

Discussion

I. Jurisdiction

Like all federal courts, this Court is a court of limited jurisdiction. We may exercise jurisdiction only to the extent expressly provided by statute. I.R.C. § 7442; *Breman v. Commissioner*, 66 T.C. 61, 66 (1976). Under section 6234(a), a partnership may petition this Court to review an FPA within 90 days of the Commissioner’s mailing of such an adjustment.

Equitable tolling “effectively extends an otherwise discrete limitations period set by Congress.” *Lozano v. Montoya Alvarez*, 572 U.S. 1, 10 (2014). The doctrine “is a traditional feature of American jurisprudence and a background principle against which Congress drafts limitations periods.” *Boechler, P.C. v. Commissioner*, 142 S. Ct. 1493, 1500 (2022). The Supreme Court has observed that a deadline can be equitably tolled if the deadline is nonjurisdictional and nothing rebuts the presumption of equitable tolling that applies to that deadline. *Id.* We are asked to decide whether the FPA petition deadline should be equitably tolled such that Kings Road’s otherwise untimely Petition would be deemed timely.

In *Big Apple Tompkins Realty LLC v. Commissioner*, No. 19040-23, 167 T.C. (Aug. 5, 2026), we held that the petition deadline in section 6234(a) is not jurisdictional. We did not reach the question of whether equitable tolling may apply. That issue is squarely presented here: whether section 6234(a) is subject to equitable tolling, and if it is subject to equitable tolling, do the circumstances of this case warrant equitable tolling.

II. Presumption of Equitable Tolling

A nonjurisdictional deadline is entitled to a rebuttable presumption in favor of equitable tolling. *Holland v. Florida*, 560 U.S. 631, 645–46 (2010). The presumption in favor of equitable tolling is rebutted “if ‘there [is] good reason to believe that Congress did *not* want

the equitable tolling doctrine to apply.” *Arellano v. McDonough*, 143 S. Ct. 543, 548 (2023) (alteration in original) (quoting *United States v. Brockamp*, 519 U.S. 347, 350 (1997)). When considering this question, the Supreme Court has considered the text and structure of the statute that establishes the deadline. *See Enbridge Energy, LP v. Nessel ex rel. Michigan*, 146 S. Ct. 1074, 1082–83 (2026).

Our Court has also considered this question. In *North Wall Holdings, LLC v. Commissioner*, 165 T.C. 143 (2025), we held that deadlines to file a TEFRA petition were jurisdictional. In so holding, we noted that the filing of a petition in a TEFRA case involves several timing issues that have been held to be jurisdictional. *See id.* at 155–58. A petition can be filed only after a final partnership administrative adjustment (FPAA) is issued by the Commissioner; only the TMP can file a petition during the initial 90 days after the Commissioner mails an FPAA; and notice partners can file a petition during the subsequent 60 days. *Id.* We further highlighted that, for 40 years, both Congress and the courts have treated the TEFRA petition deadline as jurisdictional, *see id.* at 157–59, including as recently as 2022, *see SNJ Ltd. v. Commissioner*, 28 F.4th 936 (9th Cir. 2022).

After concluding that the TEFRA petition deadline was jurisdictional, the opinion in *North Wall* went on to note: “Even setting aside the question of jurisdiction, the complexity of the TEFRA provisions leaves no room for equitable tolling of the petition deadlines in section 6226.” *N. Wall*, 165 T.C. at 164. The provision that governed filing a TEFRA petition in the Tax Court was section 6226(a) and (b) (TEFRA). When looking to the question of whether Congress wanted equitable tolling to apply, we “look[ed] not just to the wording of the deadline itself, but also to the interplay of that deadline with related provisions of the Code, and Congress’s action (or inaction) with respect to the relevant provision.” *N. Wall*, 165 T.C. at 168. We found that the section 6226 (TEFRA) petition deadlines were “highly technical” and “contain[ed] exceptions so that, where circumstances might require flexibility, that flexibility does not interfere with the TEFRA proceeding.” *N. Wall*, 165 T.C. at 167.

We also noted the havoc that might be wreaked by allowing late petitions in TEFRA cases. *See id.* at 160–64. Most notable in that regard is the assessment process. At the conclusion of a TEFRA proceeding, the Commissioner must compute the partner-by-partner liabilities that result from the Commissioner’s adjustments. Those liabilities may then be assessed either by way of a computational adjustment or by the

issuance of an affected items notice of deficiency. *Id.* at 161–62 (citing *N.C.F. Energy Partners v. Commissioner*, 89 T.C. 741, 744 (1987)).

This complex, multilayered assessment process was ameliorated by the enactment of the BBA. In 2015, Congress enacted the BBA, which repealed the partnership audit and litigation provisions of TEFRA. BBA § 1101(a), (c)(1), 129 Stat. at 625. With regard to our jurisdiction over partnership-level proceedings, section 6234(a) of the BBA replaced section 6226(a) and (b) of TEFRA. Section 6234(a) now provides:

Sec. 6234(a). In general.—Within 90 days after the date on which a notice of a final partnership adjustment is mailed under section 6231 with respect to any partnership taxable year, the partnership may file a petition for a readjustment for such taxable year with—

- (1) the Tax Court,
- (2) the district court of the United States for the district in which the partnership’s principal place of business is located, or
- (3) the Court of Federal Claims.

Section 6234(a) does not contain the same technical wording or explicit exceptions as its predecessor TEFRA equivalent. In *North Wall*, we chronicled many reasons why we inferred that Congress did not want equitable tolling to apply in TEFRA cases and the havoc that could occur if the TEFRA petition deadlines were subject to equitable tolling. *See N. Wall*, 165 T.C. at 160–68. But the administrative and practical burdens that led us to rebut the presumption in favor of equitable tolling for section 6226 (TEFRA) are simply not present for the BBA.⁴

In sum, nothing in the text or structure of section 6234(a) or its related provisions rebuts the presumption in favor of equitable tolling. Thus, the 90-day deadline in section 6234(a) is subject to equitable tolling, and we must determine whether equitable tolling applies to the facts and circumstances of this case.

⁴ The BBA was a wholesale revision of the former TEFRA partnership procedures. To describe what is absent in the BBA would require a description of the entire repealed TEFRA regime. To give but one example of the complexity in TEFRA that is not present with the BBA, TEFRA allowed multiple partners to file petitions during different timeframes with provisions that governed the interplay of those various deadlines. *See* I.R.C. § 6226(a) and (b) (TEFRA). There is no BBA equivalent.

III. *Equitable Tolling Applied*

To be entitled to equitable tolling, a taxpayer must establish (1) that it pursued its rights diligently and (2) that extraordinary circumstances outside of its control prevented it from filing on time. *See Menominee Indian Tribe of Wis. v. United States*, 577 U.S. 250, 255 (2016) (citing *Holland*, 560 U.S. at 649). Given that this test originates with the Supreme Court, it is unsurprising that the U.S. Court of Appeals for the Eleventh Circuit, to which an appeal in this case would ordinarily lie, has adopted the same test. *See* I.R.C. § 7482(b); *Steed v. Head*, 219 F.3d 1298, 1300 (11th Cir. 2000); *Sandvik v. United States*, 177 F.3d 1269, 1271 (11th Cir. 1999) (citing *Irwin v. Dep’t of Veterans Affs.*, 498 U.S. 89, 96 (1990)). The claimant must show “extraordinary circumstances that are both beyond [its] control and unavoidable even with diligence.” *Stamper v. Duval Cnty. Sch. Bd.*, 863 F.3d 1336, 1342 (11th Cir. 2017) (quoting *Sandvik*, 177 F.3d at 1271). The diligence required is “reasonable diligence” and does not extend to a “garden variety claim of excusable neglect.” *See Dotson v. United States*, 30 F.4th 1259, 1269 (11th Cir. 2022) (first quoting *San Martin v. McNeil*, 633 F.3d 1257, 1267 (11th Cir. 2011); and then quoting *Irwin*, 498 U.S. at 96). Extraordinary circumstances include fraud, misinformation, or deliberate concealment. *See Jackson v. Astrue*, 506 F.3d 1349, 1355 (11th Cir. 2007). Petitioner bears the burden of establishing that tolling applies. *See Menominee*, 577 U.S. at 255; *Stamper*, 863 F.3d at 1342. Equitable tolling is applied sparingly. *Irwin*, 498 U.S. at 96; *see also Arce v. Garcia*, 434 F.3d 1254, 1261 (11th Cir. 2006).

Kings Road, through its counsel, diligently pursued its rights. Kings Road followed up with its attorney and its staff to check whether the FPA had been received. *See Holland*, 560 U.S. at 653–54 (holding that a litigant diligently pursued his claim when he followed up multiple times with his attorney to ensure the petition was timely filed). Importantly and notably, Kings Road’s counsel did more than merely watch the mailbox. Kings Road’s counsel obtained an IRS transcript of accounts to see whether an FPA had been mailed. It did not show the issuance of an FPA. Kings Road’s counsel also contacted the IRS after the deadline for the Commissioner to mail an FPA had passed to inquire whether one had been mailed. *Cf. Dotson*, 30 F.4th at 1270 (holding that a litigant’s attorney’s failure to search for the existence of a denial letter or inquire into the status of administrative claims by contacting the previous law firm, USPS, or the Government’s trial counsel was a “garden variety claim of excusable neglect that d[id] not constitute extraordinary circumstances warranting equitable tolling”). Even after

being told by the IRS that no FPA had been mailed, Kings Road filed a petition with this Court. And the deadline chosen by petitioner's counsel was reasonably calculated by using the only date in her possession, the date the NOPPA was issued.

Kings Road also satisfies the second element required to establish equitable tolling: Extraordinary circumstances outside of its control prevented Kings Road from filing on time. *See Menominee*, 577 U.S. at 256–57. Kings Road did not receive an FPA, and the record shows that the FPA packages sent to both Kings Road and its partnership representative were returned to the Commissioner undelivered. The Eleventh Circuit has recognized that “inefficiencies of the United States Postal Service may be a circumstance” beyond a litigant’s control. *Sandvik*, 177 F.3d at 1272. We do not intend to suggest that the returned mail, alone, is sufficient to give rise to equitable tolling; in this case, there are additional circumstances surrounding the untimeliness of Kings Road’s Petition that prevented the filing of a timely petition. Kings Road’s counsel called the IRS two months after the FPA was sent and was told no notice had been sent. The Eleventh Circuit has equitably tolled relevant statutes of limitations when there has not been “deliberate concealment” but when “the claimant nevertheless has been misinformed.” *See Jackson*, 506 F.3d at 1356–57. Although there are no facts to indicate that the FPA’s issuing date was deliberately concealed by the Commissioner, Kings Road was misinformed by the IRS when it was told a notice had not been sent, whereas in fact it had been sent months earlier. And Kings Road filed a protective petition relying on a reasonably calculated deadline, unaware that the Commissioner had mailed the FPA nearly a month earlier than his deadline for doing so. Kings Road has demonstrated that extraordinary circumstances outside of its control kept it from timely filing its Petition. *See id.* at 1357.

IV. *Kings Road’s Cross-Motion to Dismiss for Lack of Jurisdiction*

Kings Road argues that the FPA is invalid for four different reasons. We will address each of Kings Road’s arguments in turn.

A. *Whether the FPA Was Properly Mailed to Kings Road*

The Commissioner properly sends an FPA if he mails it to the last known address of the partnership or partnership representative. I.R.C. § 6231(a) (flush language). The BBA’s provisions concerning the issuance and mailing of an FPA should “be construed in pari materia with the Code’s provisions concerning the issuance and mailing of a

Notice of Deficiency.” *Big Apple*, 167 T.C., slip op. at 8. A Notice of Deficiency is valid if it is mailed to the taxpayer’s last known address, and actual receipt of the notice is immaterial. *See United States v. Goldston*, 324 F. App’x 835, 837–38 (11th Cir. 2009); *Yusko v. Commissioner*, 89 T.C. 806, 810 (1987). The Commissioner bears the burden of proving, by competent and persuasive evidence, the date that a notice was mailed. *See Coleman v. Commissioner*, 94 T.C. 82, 90 (1990); *see also Big Apple*, 167 T.C., slip op. at 8–9.

Generally, if the Commissioner establishes that the Notice existed and produces a properly completed USPS Form 3877 showing that the notice was sent to the taxpayer’s last known address, the Commissioner is entitled to a presumption of proper mailing. *See Coleman*, 94 T.C. at 91. A properly completed USPS Form 3877 is one completed in compliance with the Commissioner’s established procedure for mailing. *See Lander v. Commissioner*, 154 T.C. 104, 118 (2020). A defective USPS Form 3877 is probative and may be combined with additional evidence to meet the Commissioner’s burden. *O’Neill v. Commissioner*, T.C. Memo. 2025-49, at *5–6.

Kings Road’s Motion argues that the Commissioner is not entitled to the presumption of official regularity because the USPS Form 3877 did not strictly comply with USPS Form 3877 procedures. For example, in *O’Neill*, the Commissioner failed to identify what was being mailed, the tax years involved, or the number of items mailed, and as a result, the Commissioner was not entitled to the presumption of official regularity. *Id.* at *5. But we noted in *O’Neill* that the Commissioner “may still prevail if the evidence of mailing is otherwise sufficient.” *Id.* In his objection to Kings Road’s Motion, the Commissioner provided additional evidence to show the Notice was mailed, including Audit Information Management System transcripts, a declaration from the TSPC, and USPS tracking records. Even if the USPS Form 3877 was defective in this case, when combined with USPS tracking records, internal IRS records, and internal IRS transcripts, it is sufficient to establish proper mailing. *Id.* at *6–7. Accordingly, the Commissioner has met his burden.

Kings Road also argues that the FPA was not mailed to its last known address because it was mailed to “STE 212” rather than “Suite 212.” In support of its argument Kings Road cites *Wilson v. Commissioner*, T.C. Memo. 1997-515, 74 T.C.M. (CCH) 1208, 1209, 1211, where we held that a Notice of Deficiency was invalid because it was addressed to “750 El Medio” rather than “705 El Medio,” which was the

correct address. We stated that “[a]n inconsequential error in the address will not preclude a finding that a notice of deficiency was valid” if “[t]he error was so minor that it would not have prevented delivery . . . or . . . the error did not result in actual prejudice to the taxpayer-addressee.” *Id.* at 1210. We determined that because the mistake involved “inverted numbers rather than a minor spelling error,” the “misaddressed notice of deficiency mailed to [the taxpayer] . . . failed to notify him that a deficiency had been determined.” *Id.* at 1211. This case does not involve transposed numbers, but rather a commonly recognized abbreviation of the word “suite.”

In *Kohilakis v. Commissioner*, T.C. Memo. 1989-366, 57 T.C.M. (CCH) 1054, 1055, we held that a Notice of Deficiency addressed to “184 Lincoln Ave.” rather than “184 Lincoln Blv.” was not of “sufficient consequence to invalidate the notice of deficiency.” In that case, the Commissioner sent a report to the taxpayers at “184 Lincoln Ave.,” and the taxpayers responded to it. *Id.* We determined that “neither the use of ‘Ave.’ rather than ‘Blvd.’ nor the misspelling of ‘Lincoln’ as ‘Lincoln’ appear[s] to be a contributing factor to the failure to receive the . . . notice of deficiency.” *Id.* at 1056.

In this case, the FPA was mailed to both Kings Road and its partnership representative at “100 BULL ST STE 212.” Although Kings Road did not receive the FPA, it received the NOPPA, which was addressed to “100 Bull Street, Ste 212.” The use of the common abbreviation “Ste” rather than “Suite” did not prevent delivery of the NOPPA, and there is no reason to believe the abbreviation caused the FPA not to have been delivered.⁵ Accordingly, the FPA was sent to the last known address pursuant to section 6231(a).

B. *Whether the Commissioner Failed to Exercise Due Diligence*

Kings Road also argues that “the FPAs were ineffective once returned to sender due to the Commissioner’s lack of diligence.” Citing *Estate of McKaig v. Commissioner*, 51 T.C. 331, 336 (1968), and *Gyorgy v. Commissioner*, 779 F.3d 466, 478 (7th Cir. 2015), Kings Road argues that because the FPA was returned to the Commissioner, the IRS must show that it exercised due diligence in notifying the taxpayer. *Estate of McKaig* is inapposite; in that case there was “considerable doubt”

⁵ We note, merely as an aside, that the USPS Postal Addressing Standards list STE as the recognized abbreviation for “suite.” See U.S. Postal Serv., Publ’n 28, Postal Addressing Standards Appendix C2 Secondary Unit Designators (Oct. 2024), https://pe.usps.com/text/pub28/pub28apc_003.htm.

whether the Commissioner mailed the Notice of Deficiency to the taxpayer's last known address. *Estate of McKaig*, 51 T.C. at 336. The Court reaffirmed the longstanding principle that "it is immaterial that the notice was returned undelivered, for actual receipt of the notice by the taxpayer is not required in order that the statutory filing period commence." *Id.* at 335. The petition deadline in that case was instead calculated from the remailing of the Notice to the taxpayer's counsel.

Other than for a passing reference to "reasonable diligence," it is unclear why petitioner cites *Gyorgy*. In that case, the Commissioner's mailing of a Notice of Deficiency to the taxpayer's last known address was upheld as having been proper.

Kings Road also cites *Mulder v. Commissioner*, 855 F.2d 208, 210 (5th Cir. 1988), a case in which the Commissioner mailed a notice of deficiency to the taxpayer at the address from which prior correspondence was returned marked "[m]oved, left no address." The U.S. Court of Appeals for the Fifth Circuit determined that the IRS was not diligent when, after receiving the returned correspondence, it nonetheless sent a Notice of Deficiency to the same address from which that correspondence had been returned. *Id.* at 212. The Fifth Circuit observed that, at the time of mailing the Notice of Deficiency, the IRS was on notice that the address was defective and that the IRS could have reached out to the taxpayer's return preparer or reviewed the audit file to determine the taxpayer's new address before mailing the Notice of Deficiency. *Id.* The problem for the IRS in *Mulder* was that the Commissioner was aware that the taxpayer's "last known address" was not correct at the time he mailed the Notice of Deficiency. Those are not the facts of this case; in this case, the Commissioner mailed the FPA to the correct address.⁶

C. *Whether the Commissioner Is Equitably Estopped from Claiming the FPA Was Properly Mailed*

"Equitable estoppel is a judicial doctrine that 'precludes a party from denying his own acts or representations which induced another to act to his detriment.'" *Hofstetter v. Commissioner*, 98 T.C. 695, 700 (1992) (quoting *Graff v. Commissioner*, 74 T.C. 743, 761 (1980), *aff'd per curiam*, 673 F.2d 784 (5th Cir. 1982)). The Supreme Court has held that

⁶ This case is appealable to the Eleventh Circuit. Because *Mulder* involved materially different facts and is from a circuit other than the one to which this case is appealable, we express no opinion as to whether we would reach the same conclusion.

“equitable estoppel will not lie against the Government as it lies against private litigants.” *Off. of Pers. Mgmt. v. Richmond*, 496 U.S. 414, 419 (1990). The doctrine of equitable estoppel is applied against the Commissioner “with utmost caution and restraint.” *Schuster v. Commissioner*, 312 F.2d 311, 317 (9th Cir. 1962), *aff’g in part, rev’g in part* 32 T.C. 998 (1959), and *First W. Bank & Tr. Co. v. Commissioner*, 32 T.C. 1017 (1959). Any successful attempt to invoke equitable estoppel against the Commissioner must outweigh the policy consideration in favor of “an efficient collection of the public revenue.” *Id.*

According to the Eleventh Circuit, equitable estoppel “is grounded on a notion of fair dealing and good conscience. It is designed to aid the law in the administration of justice where without its aid injustice might result.” *DeShong v. Seaboard Coast Line R.R. Co.*, 737 F.2d 1520, 1522 (11th Cir. 1984). To make a claim of estoppel against the Government, a party must establish: (1) words, conduct, or acquiescence that induces reliance; (2) willfulness or negligence with regard to the acts, conduct, or acquiescence; (3) detrimental reliance; and (4) affirmative misconduct by the Government. *United States v. McCorkle*, 321 F.3d 1292, 1297 (11th Cir. 2003).

Likewise, we have held that, for equitable estoppel to apply to the Government, the following elements must be established:

- (1) A false representation or wrongful, misleading silence by the party against whom the estoppel is claimed;
- (2) an error in a statement of fact and not in an opinion or statement of law;
- (3) the taxpayer’s ignorance of the truth;
- (4) the taxpayer’s reasonable reliance on the acts or statements of the one against whom estoppel is claimed;
- and (5) adverse effects suffered by the taxpayer from the acts or statements of the one against whom estoppel is claimed.

Wilkins v. Commissioner, 120 T.C. 109, 112–13 (2003). “Estoppel requires a finding that the taxpayer relied on the Government’s representations and suffered a detriment because of that reliance.” *Id.* at 113. “Estoppel is applied against the Commissioner ‘with utmost caution and restraint.’” *Hofstetter*, 98 T.C. at 700 (quoting *Estate of Emerson v. Commissioner*, 67 T.C. 612, 617 (1977)).

Kings Road asks us to apply the doctrine of equitable estoppel against the Commissioner to prevent him from claiming the FPAs were

properly mailed. Kings Road argues that it was adversely affected because it missed the deadline to file a timely petition and it missed the deadline to file a push-out election under section 6226. We have already held that the mailing of the FPAs was sufficient. Further, because we hold that equitable tolling applies in these circumstances, Kings Road's Petition is treated as timely, and it suffered no prejudice as to the petition-filing deadline.

We have not yet addressed whether Kings Road will be adversely affected by its supposed inability to make a push-out election under section 6226. Under section 6226(a), the partnership may make a so-called "push-out election" not later than 45 days after the date of the FPA, the result of which is to cause partnership adjustments to be taken into account by reviewed-year partners. Kings Road argues that it was adversely affected because it did not receive the FPA and was not told the FPA had been sent when its representative asked the IRS. As a result, Kings Road asks us to estop the Commissioner from arguing he properly mailed the FPA.

Kings Road did not establish that it was adversely affected in making a push-out election. Kings Road filed a protective Petition by calculating the deadline for the Commissioner to issue an FPA using the date the NOPPA was sent. Kings Road has not provided evidence that it tried, at any time, to make a push-out election or explained why it could not have filed a protective push-out election. Nor has it addressed whether the deadline to make a push-out election can (or cannot) be equitably tolled.⁷ Further, the remedy Kings Road seeks (to deprive the Court of jurisdiction) is unrelated to the ability to make a push-out election.

D. *Whether the FPA Was Issued by an Individual Properly Appointed Under the VRA*

Lastly, Kings Road argues that the FPA is invalid because it was signed by a person who lacked the authority to issue an FPA. The FPA was signed by Melanie Krause, who was the acting Commissioner at the time. In addition, Ms. Krause was deputy commissioner and first assistant to the Commissioner. The VRA governs which government employee may temporarily perform the functions and duties of a vacant,

⁷ We have previously held that administrative deadlines may be subject to equitable tolling. *See, e.g., Organic Cannabis Found., LLC v. Commissioner*, 161 T.C. 13, 45 (2023) ("[T]he 30-day period for requesting a CDP hearing may be equitably tolled where the circumstances warrant it.").

presidentially appointed, Senate-confirmed position in an executive agency. Under the VRA, either the first assistant to the office of such officer or a person appointed by the President can perform the functions and duties of the office temporarily in an acting capacity. 5 U.S.C. § 3345(a).

The Code requires that the “Secretary” mail the FPA to the partnership and the partnership representative. I.R.C. § 6231(a). “Secretary” is defined to include the Secretary of the Treasury or his delegate, and the term “delegate,” as used with respect to the Secretary of the Treasury, is defined to mean any officer, employee, or agency of the Treasury Department duly authorized by the Secretary directly, or indirectly by redelegation of authority, to perform a certain function. I.R.C. § 7701(a)(11)(B), (12)(A)(i). Treasury Department Order No. 150-10 (Apr. 22, 1982) delegates to the Commissioner the Secretary’s authority to enforce and administer the internal revenue laws. I.R.S. Deleg. Order 1-23 (Rev. 1) delegates to the deputy commissioner the authority to perform any function the Commissioner is authorized to perform. I.R.S. Deleg. Order 1-23 (Rev. 1), Internal Revenue Manual 1.2.2.2.20 (Apr. 8, 2024). But Delegation Order 1-23 (Rev. 1) also delegates to the chief tax compliance officer, chief operating officer, chief taxpayer services, and chief information officer the authority to “perform those functions the Commissioner is authorized to perform which arise out of, relate to, or concern the respective activities or functions administered by the delegated officials.” *Id.* 1.2.2.2.20(5) and (6). That same delegation order further delegates responsibilities to various people for “matters under their jurisdiction or cases under their responsibility.” *Id.* 1.2.2.2.20(8).

On February 25, 2025, Secretary of the Treasury Scott Bessent announced that Melanie Krause, IRS chief operating officer, was to replace Doug O’Donnell, IRS deputy commissioner, upon his retirement. Press Release, U.S. Dep’t of the Treasury, Krause to serve as Acting IRS Commissioner; O’Donnell retires after distinguished career (Feb. 25, 2025), <https://home.treasury.gov/news/press-releases/sb0030>.

Kings Road argues that Melanie Krause was serving as IRS chief operating officer at the time of her appointment and was not the first assistant to the Commissioner. Accordingly, Kings Road reasons that the VRA required Ms. Krause to have been appointed by the President. Kings Road’s argument fails for at least three reasons.

First, Ms. Krause had authority under the VRA. Under the VRA, the first assistant to a presidentially appointed, Senate-confirmed position “shall perform the functions . . . in an acting capacity.” 5 U.S.C § 3345(a)(1). Ms. Krause was the first assistant to the Commissioner. Thus, by operation of law, she was the acting Commissioner and had the authority to carry out matters delegated to the Commissioner.

Second, Ms. Krause had authority to carry out the Commissioner’s responsibilities under existing delegations of authority. Delegation Order 1-23 (Rev. 1) delegated to the deputy commissioner the authority to perform any function the Commissioner is authorized to perform. Because Ms. Krause was deputy commissioner, she was authorized to perform any function the Commissioner was authorized to perform, without regard to the VRA.

Third, Ms. Krause was not required to sign the FPA. With respect to the FPAA’s issued in TEFRA cases, we have written: “Because of the similar functions of the FPAA and the statutory notice of deficiency, we are convinced that the long-established principle applicable to notices of deficiency, viz, that no particular form is necessary, should apply with equal force to a FPAA.” *Clovis I v. Commissioner*, 88 T.C. 980, 982 (1987). The FPAA was to TEFRA partnership cases what an FPA is to BBA partnership cases; it is the notice in which the Commissioner makes his final determinations and from which a taxpayer may file a petition. *Compare* I.R.C. §§ 6223(a)(2), 6226(a) and (b) (TEFRA), *with* I.R.C. §§ 6231(a)(3), 6234(a) (BBA). Like the validity of the FPAA before it, the validity of an FPA must be evaluated in the light of the significant body of caselaw regarding Notices of Deficiency. And that body of caselaw is clear; a notice need not be signed. The Eleventh Circuit, the circuit to which this case is appealable, has so held. *See Tavano v. Commissioner*, 986 F.2d 1389 (11th Cir. 1993), *aff’g per curiam* T.C. Memo. 1991-237.

V. Conclusion

Section 6234(a) is subject to equitable tolling. Kings Road has satisfied the requirements for equitable tolling; it diligently pursued its rights and established extraordinary circumstances outside of its control that prevented it from filing a timely petition. Although Kings Road’s Petition was untimely, we will equitably toll the deadline under section 6234(a) and deem the Petition to have been timely. As for Kings Road’s Cross-Motion, the FPA was valid; it was properly issued and properly mailed. Accordingly, we will deny both the Commissioner’s Motion to

Dismiss for Lack of Jurisdiction and Kings Road's Cross-Motion to
Dismiss for Lack of Jurisdiction.

To reflect the foregoing,

An appropriate order will be issued.