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U.S. Tax Court: BBA partnership petition deadline subject to equitable tolling

The U.S. Tax Court yesterday held that the 90-day deadline under section 6234(a) for a partnership to petition for review of a Final Partnership Adjustment (FPA) under the Bipartisan Budget Act of 2015 (BBA) partnership audit regime is subject to equitable tolling. The court further held that equitable tolling applied under the circumstances because the partnership diligently pursued its rights and extraordinary circumstances outside its control prevented it from timely filing its petition.

The case is: *Kings Road Property, LLC, Kings Road Manager, LLC, Partnership Representative v. Commissioner*, 167 T.C. No. 11 (September 21, 2026). Read the Tax Court's [opinion](#).

Background

The IRS examined the partnership's 2020 return and on May 24, 2024, mailed a Notice of Proposed Partnership Adjustment (NOPPA) proposing to disallow a \$30.57 million charitable contribution deduction for a conservation easement. The NOPPA proposed an imputed underpayment of approximately \$11.31 million and an accuracy-related penalty of almost \$4.4 million. After receiving the NOPPA, the partnership retained new counsel.

On March 25, 2025, the IRS mailed an FPA to the partnership and its partnership representative. Although U.S. Postal Service tracking information indicated delivery, both packages were ultimately returned to the IRS as undeliverable. The IRS also mailed the FPA to former counsel but did not mail it to the partnership's new counsel, whose power of attorney had been placed on file in August 2024.

Not having received the FPA, new counsel contacted the IRS on May 21, 2025, and was told that no notices had been sent since the power of attorney was placed on file. Counsel also obtained an IRS account transcript that did not reflect issuance of an FPA. Based on the statutory deadline for issuing an FPA following the NOPPA, counsel calculated what she believed would be the petition deadline and filed a protective petition on July 9, 2025.

Because the FPA had actually been mailed on March 25, 2025, however, the 90-day period under section 6234(a) expired June 23, 2025. The petition therefore was filed 16 days late. The IRS moved to dismiss for lack of jurisdiction.

Tax Court decision

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Citing its recent decision in *Big Apple Tompkins Realty LLC v. Commissioner*, 167 T.C. No. 7 (August 5, 2026), the Tax Court reiterated that the section 6234(a) filing deadline is not jurisdictional. The court then addressed the question expressly reserved in *Big Apple* and held that the deadline may be equitably tolled. According to the court, nothing in the text or structure of section 6234(a) or related BBA provisions rebuts the presumption in favor of equitable tolling applicable to a nonjurisdictional deadline.

The court explained that a taxpayer seeking equitable tolling must establish that it (1) pursued its rights diligently and (2) was prevented from timely filing by extraordinary circumstances outside its control.

The court found both requirements satisfied. Among other actions, the partnership's counsel contacted the partnership representative to confirm whether the FPA had been received, obtained an IRS transcript, contacted the IRS after the statutory period for issuing the FPA had passed, and ultimately filed a protective petition notwithstanding the IRS's representation that no FPA had been mailed.

The court also found extraordinary circumstances outside the partnership's control. The court noted that the returned FPA packages alone were not necessarily sufficient to warrant equitable tolling, but counsel subsequently contacted the IRS and was incorrectly informed that no notice had been sent.

Accordingly, the court equitably tolled the section 6234(a) deadline and treated the petition as timely.

The court also rejected the partnership's alternative challenges to the FPA. Among other conclusions, the court held that the FPA was properly mailed to the partnership's last known address, notwithstanding use of the abbreviation "STE" rather than "Suite," and rejected arguments based on the IRS's alleged lack of diligence and equitable estoppel. The court also rejected the partnership's argument that the FPA was invalid because Melanie Krause lacked authority to sign it while serving as acting IRS Commissioner.

The court therefore denied both the IRS's motion to dismiss for lack of jurisdiction and the partnership's cross-motion to dismiss for lack of jurisdiction.

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