



Tax Court Holds that Deadline for Filing a BBA Partnership Petition Is Not Jurisdictional

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The BBA Partnership audit and litigation provisions were enacted in 2015 and became effective for tax years beginning on or after January 1, 2018. Internal Revenue Code (“IRC”) §6321(a) requires the IRS mail three notices to the partnership and the partnership representative:

1. Notice of the initiation of partnership proceedings, which advises the partnership and the partnership representative of the initiation of administrative proceedings at the partnership level of any partnership-related item;
2. Notice of proposed partnership adjustments (“NOPPA”) resulting from the proceedings, which sets out the proposed adjustments, any imputed underpayment the partnership will owe and gives the partnership an opportunity to make a modification request; and
3. Notice of final partnership adjustment (“FPA”), which sets out the final adjustments and any imputed underpayment and provides the partnership with the opportunity to petition the Tax Court, the Court of Federal Claims or a district court and to make any push-out election.

In addition, the IRS mails to the partnership (but not the partnership representative) notice that its return has been selected for examination. This notice is sent to a partnership regardless of whether it is subject to the BBA partnership procedure, such as partnerships that have elected out of the BBA partnership regime.

Section 6324 provides for judicial review of an FPA. It states, in pertinent part:

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.

(b) Jurisdictional requirement for bringing action in district court or Court of Federal Claims

(1) In general

A readjustment petition under this section may be filed in a district court of the United States or the Court of Federal Claims only if the partnership filing the petition deposits with the Secretary, on or before the date the petition is filed, the amount of (as of the date of the filing of the petition) the imputed underpayment, penalties, additions to tax, and additional amounts with respect to such imputed underpayment if the partnership adjustment was made as provided by the notice of final partnership adjustment. The court may by order provide that the jurisdictional requirements of this paragraph are satisfied where there has been a good faith attempt to satisfy such requirement and any shortfall of the amount required to be deposited is timely corrected.

Scope of judicial review

A court with which a petition is filed in accordance with this section shall have jurisdiction to determine all partnership-related items for the partnership taxable year to which the notice of final partnership adjustment relates, the proper allocation of such items among the partners, and the applicability of any penalty, addition to tax, or additional amount for which the partnership may be liable under this subchapter.

In *Big Apple Tompkins Realty, LLC v. Commissioner*, 167 T.C. No. 7 (August 5, 2026), the Tax Court addressed a question of first impression: is the 90-day period for filing jurisdictional? If it is, a court would have no jurisdiction over a petition filed more than 90 days after the FPA is mailed; the filing deadline cannot be waived or forfeited, must be raised by courts *sua sponte*, and are not subject to equitable tolling. If it is not jurisdictional, then the court has jurisdiction over an untimely petition and can decide



the case if the IRS does not raise the issue or if the partnership establishes that the 90-day deadline was equitably tolled.

At one time, trial-level and appellate courts viewed federal statutory deadlines for filing lawsuits as jurisdictional. Over the past 20 years, the Supreme Court has issued a series of opinions that courts are to treat “procedural requirement as jurisdictional only if Congress ‘clearly states’ that it is.” *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 515 (2006). In *Boechler, P.C. v. Commissioner*, 596 U.S. ____ (2022), the Court held that the 30-day deadline for petitioning the Tax Court for review of a collection due process determination was not jurisdictional and was subject to equitable tolling.

Big Apple Tompkins Realty, LLC (“Big Apple”) is treated as a partnership for tax purposes that is subject to the BBA partnership procedures. It filed a petition that had a printed USPS stamp date of November 6, 2023, that was received by the Tax Court on November 13, 2023. Attached to the petition were two FPAs, one addressed to the partnership and one to the partnership representative. The FPAs were dated August 11, 2022.

The Commissioner moved to dismiss the petition for lack of jurisdiction because the petition was not filed within the time prescribed by §6234. In its motion, the Commissioner alleged that the FPA was sent via certified mail on August 11, 2022, to the last-known addresses of the partnership and the partnership representative. Attached to the motion were a USPS Form 3877, Firm Mailing Book for Accountable Mail, and two USPS certified mailing receipts.

Big Apple objected to the motion, claiming it did not receive the FPA until November 2023 and that the motion should be denied. The Court ordered the Commissioner to file a supplement with USPS.com tracking information or state if such information is not in its possession. The Commissioner responded that it did not have USPS tracking information or any other information beyond what was attached to its motion.

The Tax Court’s Discussion

a. BBA Partnership Audit Procedures

The Court began its analysis by discussing the BBA partnership audit procedures. Partnership audit procedures begin with the Commissioner mailing to the partnership and the partnership representative a notice of initiation of administrative proceedings. The partnership representative is the sole representative of the partnership during administrative proceedings and has sole authority to act on behalf



of the partnership. IRC §6223(a), (b). All partners are bound by the actions of the partnership representative. Any partnership adjustment is determined at the partnership level and any tax attributable to the adjustments is assessed and collected at the partnership level. IRC §6221(a).

A partnership adjustment is any adjustment to a partnership-related item, including (1) any item or amount with respect to the partnership that is relevant to determining the tax liability of any person and (2) a partner's distributive share of any such item. IRC §6241(2).

To make partnership adjustments, the Commissioner must issue a NOPPA within a specified time. IRC §6231(a)(2), (b)(1), IRC §6235(a). The NOPPA includes the adjustments and the imputed underpayment, which is calculated by applying the highest marginal income tax rate to net partnership adjustments. IRC §6225(c). A partnership has 270 days from the date the NOPPA is mailed to submit a modification request to the Commissioner. IRC §6225(c)(7); Treas. Reg. (26 C.F.R.) §301.6225-2(c)(3)(i).

The Commissioner must wait 270 days after the NOPPA is mailed before the FPA can be issued and has 60 days after the 270-day period within which to do so. IRC §6231(b)(2), 6235(a)(3). A partnership may file a petition for review with the Tax Court, the Court of Federal Claims or the district court for the district in which the partnership's principal place of business is located within 90 days of the date the FPA is mailed. IRC §6234(a). An imputed underpayment may be assessed after the close of the 90-day period or, if a petition is filed, after the final decision of the court. IRC §6232(b).

If a petition is filed in accordance with IRC §6234(a), the court has jurisdiction to determine all partnership items and the applicability of any penalty of addition to tax for the year to which the FPA relates.

b. The Tax Court's Jurisdiction

Having outlined BBA partnership procedures, the Court next addressed its jurisdiction. While it is a court of limited jurisdiction, like other federal courts, the Tax Court has jurisdiction to determine whether it has jurisdiction. A petitioner, as the party seeking to invoke the Tax Court's jurisdiction, "must establish affirmatively all facts giving rise to our jurisdiction."



c. The Issuance of the FPA and the Timeliness of the Petition

Before it got to the question of whether the 90-day deadline is jurisdictional, the Tax Court turned to the question of when the FPA was issued and mailed to Big Apple. The Tax Court noted that it has applied the principles for issuing and mailing notices of deficiency to TEFRA final partnership administrative adjustment notices (“FPAA”) because, like a notice of deficiency, an FPAA “is the notice to affected taxpayers that respondent has made a final administrative determination for particular tax years and its issuance is a prerequisite to an assessment.” Similarly, an FPA is a notice of final administrative determination and a prerequisite for assessment. Additionally, the text for issuance and mailing of a notice of deficiency is “very similar” to the text concerning issuance and mailing of an FPA. The Tax Court, therefore, concluded that BBA’s provisions concerning the issuance and mailing of an FPA should be construed in *pari materia* with provisions concerning issuance and mailing of a notice of deficiency.

Big Apple did not dispute that the FPAs were mailed to its and its partnership representative’s last-known addresses. Generally, the burden of proving when a notice is mailed is on the Commissioner. A properly completed USPS Form 3877 is direct evidence of the date and fact of mailing and creates a presumption that the item was mailed on the date shown in the Form 3877. Even without a properly completed form, however, the Commissioner can provide other sufficient evidence to prove mailing.

The Form 3877 showing the mailing to Big Apple was incomplete because it did not indicate the number of items received by the USPS and was not signed or initialed by a USPS employee. Thus, there was no presumption that the FPA was properly mailed. While incomplete, the Form 3877 “nonetheless has probative value and may be combined with other evidence to meet the Commissioner’s burden.” The Form 3877 had a date stamp of August 11, 2022, the same as the date on the FPA, containing the correct names and addresses for Big Apple and its partnership representative, and the tracking numbers. The Court held that this was sufficient evidence to establish August 11, 2022, as the mailing date. Since Big Apple adduced no evidence to show the Commissioner did not mail the FPA on that date, the deadline to file its petition was November 9, 2022. Big Apple’s petition was mailed to the Tax Court no earlier than November 6, 2023, which was more than a year after the FPA was mailed.



d. Whether the Sec. 6234(a) Filing Deadline Is Jurisdictional

If a federal court’s jurisdiction depends on filing a timely complaint or petition, failure to comply deprives the court of jurisdiction. If the deadline is a “claims processing rule,” failure to timely file does not deprive the court of jurisdiction. Filing deadlines are ordinarily not jurisdictional. Deadlines that are not jurisdictional are subject to a rebuttable presumption that they may be equitably tolled based on the particular facts of the case.

Failure to meet a non-jurisdictional filing deadline can lead to dismissal for failing to state a claim, but timeliness of a complaint or petition can be waived. The Tax Court then discussed the Supreme Court’s recent jurisprudence on the use of the jurisdictional label for filing deadlines. To determine if a deadline is jurisdictional, it is necessary to look at the statute’s text, context, and relevant historical treatment. There must be a “clear statement” that the deadline is jurisdictional, which is a high bar to meet.

In *North Wall Holdings, LLC v. Commissioner*, 165 T.C. 145, 154 (2025), the Tax Court held that the TEFRA deadline for filing a petition was jurisdictional because the statute imposed a highly detailed and technical regime consisting of coordinated deadlines and explicit exceptions that could not be read to contain an implied exception and that would fail to function if equitable tolling applied.

4. The Court then looked to *Boechler, supra*. Since that case, the Court has held that the filing deadline for innocent spouse cases and notices of deficiency were jurisdictional but that the filing deadline for proceedings to determine employment status was not jurisdictional.

i. The Text of Section 6234(a)

After setting out the statutory text, the Tax Court began its consideration of the text by stating:

By itself, section 6234(a), which provides the filing deadline, clearly contains a permissive grant for a partnership to file a claim but not a grant of jurisdiction. ... Although it is not required, the statute does not contain the word “jurisdiction.” ... It simply lists the venues in which a partnership may file after receiving a timely FPA and within the 90-day deadline.



The jurisdictional grant was contained in IRC §6324(c), which states that a court “shall have jurisdiction.” The Court then parsed the phrase in §6324(c) that “a court with which a petition is filed in accordance with this section shall have jurisdiction.” “In accordance with” means “in agreement with” or “according to.” Thus, this provision could be read as saying if a petition is not filed on time, the court lacks jurisdiction.

That this was a plausible reading did not make the filing deadline jurisdictional. Sec. 6234(b) uses “far stronger” jurisdictional language. The Court reasoned if Congress intended the filing deadline to be jurisdictional, it would have used similarly strong language. This “undermines the claim that ‘in accordance with’ clearly ties judicial review in section 6234(c) to the 90-day deadline in section 6234(a).”

The Court concluded its discussion of the statutory text by stating:

It is perfectly plausible to read “in accordance with” as conditioning jurisdiction on the requirements of section 6234(a) including the filing deadline. All that is clear, however, is that Congress could have used the same phrase “jurisdictional requirements” throughout section 6234 and yet chose to use it only in section 6234(b). Accordingly, we find no clear tie between the 90-day filing deadline in section 6234(a) and the jurisdictional grant in section 6234(c).

ii. The Context of Section 6234(a)

The Court found that the BBA’s overall statutory scheme lent itself to a non-jurisdictional reading. It compared the “fundamental structural difference between TEFRA and the BBA” which led the Court in *North Wall Holdings* to conclude that TEFRA’s filing deadline is jurisdictional. TEFRA has explicit and detailed exceptions to the filing deadline, showing that an implicit exception, such as equitable tolling, wouldn’t apply. In contrast, the BBA contained no exception to the rules in §§6223 and 6234. The only exception to the applicability of BBA to partnerships is that a partnership of 100 or fewer partners can opt out of the BBA procedures.

TEFRA’s assessment procedures were not compatible with equitable tolling. If equitable tolling applied, the Commissioner would have to undo every assessment against every partner, which could lead to administrative “paralysis.” If the filing deadline was missed in a BBA partnership case, the imputed underpayment would be assessed against the partnership and, if it did not pay, the Commissioner could assess each partner his pro rata share of the imputed underpayment. [Note: If the



BBA partnership didn't pay and the individual partners were assessed and the 90-day deadline was not jurisdictional, the IRS would have to abate the assessments against each partner if the partnership was allowed to file a late petition. This could cause a similar administrative paralysis as would occur in a TEFRA proceeding.]

The Court ended this section of its analysis by stating “although the language of sections 6324 of the BBA and 6226 of TEFRA is nearly identical, we do not find in the BBA the same legal and administrative complexities that led us to our holding in *North Wall*.”

iii. **Historical Treatment**

The decision in *North Wall* had forty years of jurisprudence supporting a jurisdictional reading of §6226's filing deadline. The BBA completely overhauled the partnership audit and litigation system. As a result, there was no historical support for a jurisdictional reading of §6234(a).

e. **Conclusion**

Having determined that §6234(a)'s deadline for filing a petition was not jurisdictional, the Tax Court denied the motion but “reserved judgment on whether the 900-day deadline is subject to equitable tolling until the parties raise this issue in an appropriate manner.”

Lagniappe¹

While I disagree with the Tax Court on undoing only one assessment in a BBA case, given the Supreme Court's recent cases on whether procedural rules are jurisdictional, the result is the correct one. Following the Supreme Court's lead, courts will be more likely to find that deadlines in the Code are not jurisdictional. A case in point is the Eighth Circuit's August 11, 2026, decision in *Maniktala v. Commissioner*, which reversed the Tax Court's dismissal of a petition for lack of jurisdiction because it was filed late and holding that §6213(a)'s 90-day period for filing a petition to redetermine a deficiency was not jurisdictional. In reversing the Tax Court, the Eighth Circuit joined the Second, Sixth and Seventh Circuits.

¹ “Lagniappe” is a Cajun word meaning “something extra.”



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