



## Tax Court Answers the Unanswered Question: Holds that Deadline for Filing Petition Challenging BBA Partnership Adjustment Was Equitably Tolled

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We previously blogged about the Tax Court’s decision in *Big Apple Tompkins Realty LLC v. Commissioner*, which held that the deadline for filing a petition challenging a Notice of Final Partnership Adjustments (“FPA”) under Internal Revenue Code (“IRC”) § 6234(a) was not jurisdictional.<sup>1</sup> That case left an unanswered question:<sup>2</sup> can the filing deadline be equitably tolled. In *Kings Road Property LLC v. Commissioner*, 165 T.C. No. 11 (September 21, 2026), the Tax Court answered the question in the affirmative. Based on the facts in the case, the Court held that the filing deadline was equitably tolled.

### Background

Kings Road Property LLC (“Kings Road”) is a limited liability company taxed as a partnership. On its 2020 partnership return it claimed a \$30,570,000 deduction for the charitable contribution of a conservation easement. The IRS audited Kings Road. On May 24, 2024, the IRS mailed a Notice of Proposed Partnership Adjustment (“NOPPA”) to the partnership and the partnership representative, both of whom received the NOPPA. The NOPPA proposed an imputed underpayment against Kings Road of \$11.3 million and an accuracy-related penalty of \$4.395 million. Kings Road then retained new counsel, who uploaded their Power of Attorney onto the IRS’s CAF system on August 27, 2024.

IRC § 6235(a)(3) provides that if the partnership does not request modification of the imputed underpayment pursuant to IRC § 6225(c), the IRS has 330 days from the date of the NOPPA within which to issue an FPA. Kings Road calculated the 330-day period to end on April 19, 2025. Since that date fell on a Saturday, the final day to issue the FPA was April 21, 2025.

Neither Kings Road, the partnership representative, nor their new counsel received an FPA. On May 21, 2025, Kings Road’s new counsel called the IRS and was informed that no notices had been issued since the Power of Attorney was filed in August 2024. Counsel obtained a transcript from the IRS. The transcript did not show the issuance of an FPA. The partnership

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<sup>1</sup> [Big Apple Tompkins Realty Blog](#)

<sup>2</sup> *The Unanswered Question* is a book by Leonard Bernstein based on his famous series of lectures at Harvard University



representative checked his files and confirmed no FPA was received. On July 9, 2025, Kings Road filed a protective petition claiming that since an FPA was not issued as of April 21, 2025, any FPA issued was untimely. In the alternative, if an FPA was timely issued, the protective petition challenged any proposed imputed underpayment.

Unbeknownst to Kings Road and its counsel, the IRS had timely mailed an FPA to Kings Road, the partnership representative, and their former counsel. The FPA was addressed to the same location as the NOPPA, with “Ste 212” for the suite number. The FPAs to the partnership and the partnership were returned by the US Postal Service as undeliverable as addressed.

The IRS moved to dismiss the petition for lack of jurisdiction. Kings Road objected, arguing that § 6324(a) is a claims processing rule and that under the facts, the deadline to file the petition was equitably tolled. Kings Road moved to dismiss on the ground that the FPA was invalid.

### **The Tax Court Holds that Equitable Tolling Applies to FPAs**

The Supreme Court has held that when a deadline is not jurisdictional, equitable tolling applies unless there is good reason to believe Congress did not want it to apply. In *North Wall Holding LLC v. Commissioner*, 165 TC 143 (2025), the Court held that the filing deadline for challenging a Notice of Final Proposed Partnership Adjustment issued under the TEFRA partnership rules was jurisdictional and that, regardless, equitable tolling did not apply because the complexity of the statutory scheme and the multilayered assessment process left no room for equitable tolling. Kings Road, however, involved the BBA partnership rules. The BBA partnership rules, including § 6234(a), were meant to simplify the partnership audit regime and did not contain the same technical wording or the explicit exceptions of TEFRA. As a result, the Tax Court concluded that equitable tolling applies to the deadline for filing a petition challenging an FPA.

### **The Deadline for Kings Road to File a Petition Was Equitably Tolloed**

For equitable tolling to apply, a taxpayer must prove (1) that it diligently pursued its rights and (2) extraordinary circumstances beyond its control prevented it from filing on time. Here, Kings Road diligently pursued its rights. Its counsel contacted the IRS and obtained a transcript after the deadline for issuing the FPA had passed to find out if an FPA was issued. It filed a petition with the Tax Court as a protective measure prior to the deadline its counsel computed as the last date to petition the Court.



The Court also found that extraordinary circumstances existed. The US Postal Service returned the FPA as undeliverable even though it sent to the same address as the NOPPA, which was received by both Kings Road and its partnership representative. Kings Road's counsel called the IRS two months after the FPA was issued and was told no notice was sent. It filed a protective petition in case an FPA was issued.

Since Kings Road had exercised due diligence and extraordinary circumstances existed, the deadline for filing the petition was equitably tolled. Thus, the petition was timely and the IRS's motion to dismiss was denied.

### **Kings Road's Motion to Dismiss**

Kings Road made four arguments in its motion to dismiss on the ground that the FPA was invalid. The Tax Court rejected the argument that the FPA was invalid because it was not properly mailed since the FPA was mailed to the same address as the NOPPA which was delivered and using the common abbreviation "Ste" for Suite was insufficient to invalidate it. It also rejected the argument that the IRS failed to exercise due diligence, since the FPA was sent to the last known address of both Kings Road and its partnership representative that was sufficient by law to make it valid. Third, Kings Road did not show it was adversely affected by not receiving the FPA; that it did not file a protective push out election, evidenced that it did not intend to make such an election. Finally, since there is no requirement that the FPA be signed, the fact that it was signed by the Acting Commissioner did not invalidate the FPA.

### **Practice Tips**

The IRS keeps track of the statute of limitations on assessment for every case under audit. While it occasionally blows a statute, the IRS doing so is rare. *Kings Road* teaches the importance of a tax professional keeping track of a client's statute of limitations on assessment of a case under audit. In a BBA partnership case, if a statute of limitations has expired and you or your client have not received an FPA, contact the IRS to determine whether an FPA has been issued. If it has, contact the IRS revenue agent who conducted the audit to obtain a copy of the FPA in sufficient time to file a petition with the Tax Court, the district court, or the Court of Federal Claims. If a timely petition is not filed, and you do not create a sufficient record to justify equitable tolling, the IRS will assess the imputed underpayment against the partnership. The partnership will have lost the right to make a push-out election and, more importantly, the right to challenge the adjustments will be lost. Unlike the assessment of an income, estate, or gift tax deficiency, there are no provisions for a partnership to claim a refund of an imputed underpayment.



The one problem from the taxpayer's perspective is the failure to make a push-out election. If you are in the same situation as the taxpayer in *Kings Road*, or you find out the FPA was issued but the 45-day period for filing a push-out election has expired, consider filing a protective push-out election and be prepared to argue that the time for making the election was a claims processing rule and was equitably tolled. The push-out election places the burden of paying any tax resulting from the adjustment on the persons who were partners in the years under audit rather than on the persons who may be partners in the year the adjustment becomes final.

The Second, Third, Sixth and Eighth Circuits, which have held that the 90-day period for petitioning the Tax Court to redetermine a deficiency under IRC § 6213(a) is not jurisdictional and may be equitably tolled. The First Circuit has held it is not jurisdictional, but that equitable tolling does not apply. *Kings Road's* lessons are applicable to notices of deficiency. If a notice of deficiency is not received by the deadline, you should inquire to determine if one has been issued and make a record of the efforts made. Remember, petitioning the Tax Court is the only method for contesting a notice of deficiency prepayment.

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