

165 T.C. 1-36

# UNITED STATES TAX COURT

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## REPORTS

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July 1, 2025, to

July 31, 2025

UNITED STATES TAX COURT

WASHINGTON, D.C.



## JUDGES OF THE UNITED STATES TAX COURT

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### *Chief Judge*

PATRICK J. URDA

### *Judges*

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CARY DOUGLAS PUGH

TAMARA W. ASHFORD

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CATHY FUNG

Senior Judges recalled to perform judicial duties under the provisions of section 7447 of the Internal Revenue Code:

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JAMES S. HALPERN

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JUAN F. VASQUEZ

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### *Special Trial Judges*

ZACHARY FRIED, *Chief Special Trial Judge*

PETER J. PANUTHOS

LEWIS R. CARLUZZO

DIANA L. LEYDEN

JENNIFER SIEGEL

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CHARLES G. JEANE, *Clerk*

SHEILA A. MURPHY, *Reporter of Decisions*



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REPORTS  
OF THE  
UNITED STATES TAX COURT

JM ASSETS, LP, A-A-A STORAGE, LLC, PARTNERSHIP  
REPRESENTATIVE, PETITIONER *v.* COMMISSIONER OF  
INTERNAL REVENUE, RESPONDENT

Docket No. 2531-24.

Filed July 2, 2025.

P is a partnership subject to the audit and litigation procedures of I.R.C. §§ 6221 et seq. as established by the Bipartisan Budget Act of 2015, Pub. L. No. 114-74, 129 Stat. 584. Under those procedures, at the conclusion of the examination of a partnership return, R calculates an imputed underpayment. Within 270 days of notification of the amount of a proposed imputed underpayment, a partnership may submit a request for modification of that amount. In the case of any modification, the period within which R may make a final partnership adjustment remains open for at least 270 days “after the date on which everything required to be submitted . . . is so submitted.” I.R.C. § 6235(a). Treas. Reg. § 301.6235-1(b)(2)(A) defines “the date on which everything required to be submitted . . . is so submitted” to be the date the period during which a partnership may request modification ends. On June 9, 2022, R notified P of the amount of an imputed underpayment. P submitted everything required to be submitted for a modification request 250 days later, on February 14, 2023. R made an adjustment 290 days after P’s request, on December 1, 2023. Pending before the Court are cross-motions disputing whether R’s adjustment was timely. P argues that the period

for adjustment expired 270 days after it submitted its modification request. Relying on his regulation, R argues that the period for adjustment did not expire until 270 days after the close of the period during which P could request modification. *Held*: When a regulation attempts to change an unambiguous provision of a statute, the regulation falls outside the boundaries of any rulemaking authority that Congress may have delegated. *See Varian Med. Sys., Inc. & Subs. v. Commissioner*, 163 T.C. 76, 107 (2024). *Held, further*, to the extent Treas. Reg. § 301.6235-1(b)(2)(A) holds the period of adjustment open longer than I.R.C. § 6235(a)(2), it is contrary to the statute. *Held, further*, the extended period of limitations for a substantial omission of income under I.R.C. § 6235(c)(2) does not apply when the taxpayer adequately discloses the nature and amount of the omitted income. *Held, further*, P adequately disclosed the nature and amount of the income R asserts was omitted. *Held, further*, R's Notice of Final Partnership Adjustment is untimely.

BUCH, *J.*, wrote the opinion of the Court, which URDA, *C.J.*, and KERRIGAN, NEGA, PUGH, ASHFORD, COPELAND, JONES, TORO, GREAVES, MARSHALL, WEILER, WAY, LANDY, ARBEIT, GUIDER, JENKINS, and FUNG, *JJ.*, joined.

*Thomas A. Cullinan, Larry Alan Campagna, and Samuel T. Kuzniewski*, for petitioner.

*Brooke N. Stan, Sheila R. Pattison, Bethany E. Ortiz, and Judy M. Tejada-Gonzales*, for respondent.

#### OPINION

BUCH, *Judge*: JM Assets, LP (JM Assets), is a limited partnership and is treated as a partnership subject to the Bipartisan Budget Act of 2015 (BBA), Pub. L. No. 114-74, § 1101(a) and (g), 129 Stat. 584, 625, 638. In 2018, JM Assets engaged in several transactions to dispose of real property it owned, and it reported those transactions on its 2018 Form 1065, U.S. Return of Partnership Income. The Commissioner adjusted JM Assets' income by increasing the net section 1231<sup>1</sup> gain from those sales.

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<sup>1</sup> 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, regulation references are to the Code of Federal Regulations, Title 26 (Treas. Reg.), in effect at all relevant times, and Rule references are to the Tax Court Rules of Practice and Procedure. All monetary amounts are shown in U.S. dollars and rounded to the nearest dollar.

Pending before the Court are four Motions. The first is the Commissioner's Motion for Partial Summary Judgment, in which he asks the Court to conclude that the Notice of Final Partnership Adjustment (FPA) for JM Assets' 2018 Form 1065 was timely pursuant to section 6235. The Commissioner relies on Treasury Regulation § 301.6235-1(b)(2), which defines the period the Commissioner has to issue the FPA in the event a partnership requests a modification of an imputed underpayment pursuant to section 6225(c). The second is JM Assets' Motion to Dismiss for Lack of Jurisdiction, in which it asks the Court to dismiss the case because the FPA was untimely pursuant to section 6235(a). JM Assets argues the Commissioner's regulation exceeded the authority granted by Congress to interpret section 6235 by extending the period for adjustment provided in the statute. The third and fourth are the Commissioner's Motion for Leave to File Out of Time First Amendment to Answer and Motion for Leave to File First Supplement to Objection to Motion to Dismiss for Lack of Jurisdiction. The Commissioner asks the Court in both of his Motions for leave to amend his pleadings to include the alternative argument that the FPA is not barred by the period of limitations pursuant to section 6235(c)(2). Under section 6235(c)(2), the period of limitations is extended from three years to six years in the case of an omission in excess of 25% of the gross income stated on the return pursuant to section 6501(e)(1)(A).

### *Background*

The facts described below are derived from the parties' pleadings and Motion papers. *See* Rule 121(c)(1). They are stated solely for the purpose of deciding the pending Motions and are not findings of fact for this case. *See Sundstrand Corp. v. Commissioner*, 98 T.C. 518, 520 (1992), *aff'd*, 17 F.3d 965 (7th Cir. 1994).

#### *I. JM Assets and Its Transactions*

JM Assets is a limited partnership with its principal place of business in Texas. JM Assets' primary business is the management of the real property it owns as well as the real property owned by entities in which JM Assets holds ownership interests.

In 2018, JM Assets disposed of real property it owned. It reported these transactions as installment sales on its 2018 Form 1065.

## II. *JM Assets' 2018 Form 1065*

On September 13, 2019, JM Assets timely filed its 2018 Form 1065 on extension. On that return, JM Assets identified A-A-A Storage, LLC (AAA Storage), as the partnership representative with respect to its 2018 Form 1065.

JM Assets reported the disposition of real property it owned in 2018. It included with its Form 1065 a Form 4797, Sales of Business Property, and several Forms 6252, Installment Sale Income. On its Form 4797, JM Assets reported \$403,672 of section 1231 gain from installment sales and \$732,566 of section 1231 gain from like-kind exchanges. On the accompanying Forms 6252, in addition to reporting installment sales from prior years, JM Assets reported five properties sold in 2018 with corresponding selling prices. These properties were identified as “Kittyhawk,” “Old Lockhart,” “M 14.49ac 290W,” “7ac US-1,” and “FM 2978-51st-Summerfield” and included selling prices of \$88,000, \$563,065, \$1,453,000, \$564,000, and \$7,329,705, respectively. Those forms also included amounts for basis, various expenses for the sales, gross profit, and ultimately, installment sale income.

## III. *IRS Examination and Proposed Adjustment*

The Commissioner examined JM Assets' 2018 return. On June 9, 2022, the Commissioner issued a Notice of Proposed Partnership Adjustment (NOPPA) to JM Assets and its partnership representative. The NOPPA stated an adjustment was required “to increase the partnerships overall section 1231 gain” relating to the “installment sales of five separate properties on the 1065 for 2018 on the 6252.” The properties were described in the NOPPA's adjustment explanation using the names and sale prices listed in JM Assets' Forms 6252. The NOPPA states that JM Assets must “recognize current year gain in full on the sale of the partnership properties that were reported.” The NOPPA proposed an adjustment of \$5,499,437 to net section 1231 gain and an imputed underpayment of \$2,034,792.

#### *IV. Modification Request and Partnership Adjustment*

On February 14, 2023, JM Assets submitted Form 8980, Partnership Request for Modification of Imputed Underpayments Under Section 6225(c). JM Assets requested a modification of the tax rates for two of its partners. JM Assets did not thereafter supplement its submission, and the Commissioner did not request any additional information. In a letter captioned “Notice of Modification Request Determination” dated June 5, 2023, the Commissioner approved the modifications in full. JM Assets did not file Form 8981, Waiver of the Period Under IRC Section 6231(b)(2)(A) and Expiration of the Period for Modification Submissions Under IRC Section 6225(c)(7), with its Form 8980.

On December 1, 2023, the Commissioner issued an FPA. The FPA determined an imputed underpayment of \$2,034,792 relating to adjustments to section 1231 gain. Notwithstanding the June 5, 2023, letter approving the requested modification in full, the FPA contained the same section 1231 gain adjustment and imputed underpayment amounts as detailed in the NOPPA. The FPA also determined an accuracy-related penalty for transactions lacking in economic substance under section 6662(b)(6) and (i) or, in the alternative, a penalty for either negligence or a substantial understatement of income tax under section 6662(b)(1) or (2), respectively.

#### *V. Petition and Parties’ Competing Motions*

JM Assets, through its partnership representative, filed a timely Petition challenging the FPA. In its Petition, JM Assets argues that the FPA is untimely pursuant to section 6235(a)(2) and also challenges the underlying adjustments. At the time the Petition was filed, both JM Assets’ and AAA Storage’s principal places of business were in Texas.

In his Answer the Commissioner confessed error as to the amounts shown in the FPA but disputed that the FPA was untimely. The Commissioner acknowledged that the amount set forth in the FPA was incorrect, alleging “the amount shown as the imputed underpayment on the cover of the FPAA [sic] is incorrect since it does not take into account the modification request accepted by respondent.” As for the timeliness of the FPA, the Commissioner presaged the arguments that would follow in his Motion for Partial Summary Judgment.

Shortly thereafter, the Commissioner filed a Motion for Partial Summary Judgment arguing that the FPA was issued within the period of limitations of section 6235(a)(2). In short, the Commissioner's position is that when he issues a NOPPA setting forth an imputed underpayment, a taxpayer has 270 days within which to seek modification of the amount of the imputed underpayment. In turn, under section 6235(a)(2), the period within which the Commissioner may issue an FPA expires 270 days "after the date on which everything required to be submitted to the Secretary . . . is so submitted." The Commissioner argues that, when a taxpayer seeks modification of the imputed underpayment, the period within which to issue an FPA under section 6235(a)(2) begins running at the conclusion of the period within which modification may be sought under section 6225(c)(7). For this proposition, the Commissioner relies on Treasury Regulation § 301.6235-1(b)(2), which defines the "date on which everything required to be submitted" to be the date the period for requesting the modification ends.

Under the Commissioner's view, the FPA was timely. The Commissioner mailed a NOPPA to JM Assets on June 9, 2022. The period within which to submit a modification request ended on March 6, 2023. But on February 14, 2023, JM Assets sought a modification of the imputed underpayment. Thus, the Commissioner posits, the period within which to issue an FPA began to run after March 6, 2023 (the end of the period within which to seek modification), and ended on December 1, 2023, the date the Commissioner mailed the FPA underlying this case.

A few days after the Commissioner filed his Motion, JM Assets filed a Motion to Dismiss for Lack of Jurisdiction arguing the FPA was untimely.<sup>2</sup> Relying on the same facts and Code provisions as the Commissioner, JM Assets argues

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<sup>2</sup> JM Assets argues that the Court does not have jurisdiction over a BBA partnership action unless the Commissioner has mailed a valid FPA. JM Assets states that dismissal is appropriate here because the FPA was untimely. The statute of limitations is a defense in bar and not a plea to the jurisdiction of this Court. *See Robinson v. Commissioner*, 57 T.C. 735, 737 (1972) (citing *Badger Materials, Inc. v. Commissioner*, 40 T.C. 1061, 1063 (1963), *supplementing* 40 T.C. 725 (1963)). Therefore, we will recharacterize JM Assets' Motion to Dismiss for Lack of Jurisdiction as a Motion for Summary Judgment under Rule 121.

that the period within which the Commissioner could issue an FPA expired 270 days after it submitted its modification request.

The Commissioner also filed Motions for Leave to File Out of Time First Amendment to Answer and to File First Supplement to Objection to Motion to Dismiss for Lack of Jurisdiction. In both documents, the Commissioner argues that the FPA was timely under section 6235(c)(2). Section 6235(c)(2) extends the period of limitations for a partnership adjustment from three years to six if there is a substantial omission as described in section 6501(e)(1)(A). The Commissioner argues that, by reporting its sales of property as installment sales, JM Assets omitted \$5,499,437 of gross income, an amount in excess of 25% of JM Assets' reported gross income of \$16,017,287.

JM Assets objects to both of the Commissioner's Motions. JM Assets argues that both Motions should be denied because there was undue delay in filing the Motions and because the alternative argument would be futile. JM Assets argues that section 6235(c)(2) does not apply because it adequately disclosed the transactions giving rise to what the Commissioner argues is omitted income on its Forms 6252.

### *Discussion*

Pending before the Court is JM Assets' Motion for Summary Judgment and the Commissioner's Motion for Partial Summary Judgment. We are asked to decide whether the period of limitations to adjust partnership items under section 6235(a) expired before the Commissioner mailed the FPA. To answer this question, we must decide whether Treasury Regulation § 301.6235-1 is valid as applied.

Additionally pending before the Court are the Commissioner's Motion for Leave to File Out of Time First Amendment to Answer and Motion to File First Supplement to Objection to Motion to Dismiss for Lack of Jurisdiction. Those Motions ask us to decide whether the Commissioner should be permitted to amend his pleadings to present the alternative argument that the FPA is timely pursuant to section 6235(c)(2) because of a substantial omission of income. To answer this question we may consider the merits of the underlying issue, specifically the likelihood that the Commissioner would

prevail on the issue of whether JM Assets made a substantial omission of income for 2018.

We will address these two issues in turn.

### I. *BBA Partnership Audit Procedures*

In 2015, Congress enacted the BBA, which repealed the partnership audit provisions of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. No. 97-248, 96 Stat. 324. BBA § 1101(a), (c)(1), 129 Stat. at 584, 625. The BBA created a new set of rules for making adjustments that relate to partnership returns for tax years beginning after December 31, 2017. *See* BBA § 1101(g)(1), 129 Stat. at 638. The BBA applies to any entity that is required to file a partnership return under section 6031(a) or that files a partnership return. I.R.C. §§ 6221(a), 6241(1), (8).

An audit under the new procedures begins with the Commissioner's mailing to the partnership and the partnership representative a notice that he has initiated an administrative proceeding. I.R.C. § 6231(a)(1). During the audit, the partnership is the sole party to appear before the Commissioner and is represented by the partnership representative, who has the sole authority to act on behalf of the partnership. I.R.C. § 6223(a). All partners are bound by the actions of the partnership during these proceedings. I.R.C. § 6223(b). The Commissioner determines partnership adjustments, if any, at the partnership level, and any tax attributable to those adjustments is assessed and collected at the partnership level. I.R.C. § 6221(a). Partnership adjustments include any adjustment to a partnership-related item, which includes any item that is relevant in determining the tax liability of any person or a partner's distributive share of any such item. I.R.C. § 6241(2).

To make those adjustments, the Commissioner issues a NOPPA. I.R.C. § 6231(a)(2). The NOPPA includes the adjustments as well as the amount of any imputed underpayment due from the partnership. The imputed underpayment is calculated by applying the highest marginal rate to the net partnership adjustments. I.R.C. § 6225(b). The imputed underpayment is ultimately assessed and collected in the year of the adjustment, not the year under review. I.R.C. §§ 6225(a)(1), 6232(a); *see also* I.R.C. § 6225(d).

But after the NOPPA and before assessment, the partnership may submit a request to modify the imputed underpayment set forth in the NOPPA. I.R.C. § 6225(c).<sup>3</sup> The partnership has 270 days from the date the Commissioner mails the NOPPA to submit a modification request to the Commissioner. I.R.C. § 6225(c)(7); Treas. Reg. § 301.6225-2(c)(3)(i).

When enacting these provisions, Congress directed the Commissioner to create procedures for modifying imputed underpayments. I.R.C. § 6225(c)(1), (6). Consistent with that directive, the Commissioner has created a procedure whereby a partnership may request a modification by submitting a Form 8980 along with documentation to substantiate the request. *See* IRS Pub. 5346, Instructions for Form 8980, at 1–2 (2020). The Form 8980 instructions list certain required forms that must be attached to the Form 8980 for a complete modification request. *Id.* at 1, 3. The instructions also describe other forms, including Form 8981, that relate to the modification process that may be submitted as “stand-alone forms.” *Id.* at 2.<sup>4</sup>

To make his final determination, the Commissioner must mail an FPA to the partnership and partnership representative. I.R.C. § 6231(a)(3). From that FPA, the partnership may file a petition for judicial review with the Tax Court, the Court of Federal Claims, or the district court where the partnership’s principal place of business is located. I.R.C. § 6234(a). A petition must be filed within 90 days of the date the FPA is mailed. *Id.* An assessment of an imputed underpayment is made after the close of that 90-day period or, if a petition is filed, upon final decision of the court. I.R.C.

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<sup>3</sup> Modification requests under section 6225(c) may be submitted by partnerships for any of several reasons. Section 6225(c) permits the partnership to submit information to show the Commissioner that an amended return was filed or alternative procedures to filing amending returns were conducted, a partner is tax-exempt, a partner has a lower tax rate, or a publicly traded partnership incurred certain passive activity losses. I.R.C. § 6225(c)(2)–(5). The regulations provide additional grounds for modification such as taking into account the number and composition of imputed underpayments, dividends received from partners who are qualified investment entities, closing agreements, treaty modifications, or other situations not described or anticipated by the statute and regulations. Treas. Reg. § 301.6225-2(d)(6)–(10).

<sup>4</sup> These instructions remain unchanged as of December of 2024. *See* IRS Pub. 5346, Instructions for Form 8980 (2024).

§ 6232(b). The court has jurisdiction to determine all partnership-related items, the proper allocation of such items, and the applicability of any penalty or addition to tax for the year to which the FPA relates. I.R.C. § 6234(c).

## II. *Statute of Limitations for Partnership Adjustments*

There are limitations that govern when the Commissioner must inform a partnership of proposed and final partnership adjustments. Before the Commissioner can issue an FPA, he must first issue a NOPPA. I.R.C. § 6231(b)(2). And once the Commissioner issues the NOPPA, he must generally wait 270 days before issuing the FPA. I.R.C. § 6231(b). *But see* I.R.C. § 6231(b)(2) (allowing the partnership to waive the 270-day period); Treas. Reg. § 301.6231-1(b)(2) (same).

As for when the Commissioner can mail a NOPPA, it must be mailed no later than the period of limitations in section 6235. I.R.C. § 6231(b)(1). Section 6235(a) provides:

Sec. 6235(a) In general.—Except as otherwise provided in this section or section 905(c), no adjustment under this subchapter for any partnership taxable year may be made after the later of—

(1) the date which is 3 years after the latest of—

(A) the date on which the partnership return for such taxable year was filed,

(B) the return due date for the taxable year, or

(C) the date on which the partnership filed an administrative adjustment request with respect to such year under section 6227, or

(2) in the case of any modification of imputed underpayment under section 6225(c), the date that is 270 days . . . after the *date on which everything required to be submitted to the Secretary pursuant to such section is so submitted*, or

(3) in the case of any notice of proposed partnership adjustment under section 6231(a)(2), the date that is 330 days . . . after the date of such notice.<sup>5]</sup>

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<sup>5</sup> Shortly after enacting the BBA, Congress amended the original period of limitations for making adjustments under section 6235(a)(3) to extend it from 270 days to 330 days. Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, div. Q, § 411(c)(2), 129 Stat. 2242, 3122 (2015). Congress amended the period to

rectify] the unintended conflict between section 6231 (barring the Secretary from issuing the notice of final partnership adjustment earlier than the expiration of the 270 days after the notice of a proposed adjustment) and section 6235 (requiring that a notice of final partnership adjustment be filed no later than 270 days after the notice of proposed

(Emphasis added.) Subsection (a) authorizes the Commissioner to make his adjustment any time before the end of the latest of the several time periods set forth in paragraphs (1), (2), and (3). As is relevant here, once the Commissioner issues a NOPPA, he has at least 330 days within which to mail an FPA.<sup>6</sup> If within 270 days of the Commissioner’s mailing of the NOPPA the partnership seeks modification of the imputed underpayment under section 6225(c), then the Commissioner may mail an FPA up to 270 days “after the date on which everything required to be submitted to the Secretary pursuant to such section is so submitted.”

The Commissioner has defined “the date on which everything required to be submitted . . . is so submitted” by regulation. In promulgating Treasury Regulation § 301.6235-1(b)(2), the Commissioner defined when “everything required to be submitted” is deemed to have been submitted under section 6235(a)(2). The regulation provides:

(i) In general. For purposes of . . . this section, the date on which everything required to be submitted to the IRS pursuant to section 6225(c) is so submitted is the earlier of—

(A) The date the period for requesting modification ends (including extensions) as described in § 301.6225-2(c)(3)(i) and (ii); or

(B) The date of the period for requesting modification expires as a result of a waiver of the prohibition on mailing a notice of final partnership adjustment (FPA) under § 301.6231-1(b)(2).

Under this regulation, if the partnership waives the period for requesting modification under section 6231(b)(2), then that waiver is deemed to be the submission of everything required to be submitted. Treas. Reg. § 301.6235-1(b)(2)(i)(B). Absent such a waiver, everything is deemed to have been submitted at the close of the 270-day period during which the partnership can request modification of an imputed underpayment. Treas. Reg. § 301.6235-1(b)(2)(A).

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adjustment in the case of a partnership that does not seek modification of the imputed underpayment).

Staff of J. Comm. on Tax’n, 114th Cong., General Explanation of Tax Legislation Enacted in 2015, at 75 n.247 (J. Comm. Print 2016). Although this publication is not legislative history, “like a law review article, [it] may be relevant to the extent it is persuasive.” *United States v. Woods*, 571 U.S. 31, 48 (2013).

<sup>6</sup> Taken together, sections 6231(b)(2) and 6235(a)(3) create a window of at least 60 days within which the Commissioner may mail an FPA.

### III. *Timeliness of the JM Assets FPA*

We must decide whether the Commissioner timely mailed the FPA to JM Assets. The parties' positions can easily be summarized. JM Assets argues that the Commissioner could make his adjustment the later of 330 days after mailing the NOPPA or 270 days after it submitted everything required to be submitted to request modification of an imputed underpayment. For this proposition, JM Assets directs the Court to the text of section 6235(a). The Commissioner counters that the 270 days does not begin to run until the close of the period during which a modification request may be submitted. For this proposition, the Commissioner directs the Court to Treasury Regulation § 301.6235-1. To the extent the regulation the Commissioner relies on is inconsistent with the statute, JM Assets argues the regulation is invalid. We must consider the extent to which the Code and the regulation are in tension.

#### A. *Code v. Regulation*

Section 6235(a) provides the period by which the Commissioner may make adjustments to a BBA partnership. Under section 6235(a), the period within which the Commissioner must make those adjustments is the latest of five possible dates: (1) three years after the date on which the partnership return was filed, I.R.C. § 6235(a)(1)(A); (2) three years after the due date of the return, I.R.C. § 6235(a)(1)(B); (3) three years after the date on which the partnership filed an administrative adjustment request under section 6227, I.R.C. § 6235(a)(1)(C); (4) in the case of a proposed partnership adjustment under section 6231(a)(2), the date that is 330 days (plus any extension under section 6225(c)(7)) after the date of such a notice, I.R.C. § 6235(a)(3); or (5) in the case of a modification request made pursuant to section 6225(c), 270 days (plus any extension under section 6225(c)(7)) after the date on which everything required to be submitted to the Secretary pursuant to such section is so submitted, I.R.C. § 6235(a)(2).

Treasury Regulation § 301.6235-1(b)(2) interprets "the date on which everything required to be submitted" under section 6235(a)(2). As is relevant here, the regulation provides: "[T]he date on which everything required to be submitted to the IRS pursuant to section 6225(c) is so submitted is . . . [t]he date

the period for requesting modification ends . . . .” Treas. Reg. § 301.6235-1(b)(2)(i)(A).

### B. Regulation Validity

“A regulation to be valid must be reasonable and must be consistent with law.” *Int’l Ry. Co. v. Davidson*, 257 U.S. 506, 514 (1922). The Supreme Court has directed lower courts reviewing agency action to “exercise their independent judgment in deciding whether [the] agency has acted within its statutory authority.” *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244, 2273 (2024). As the Supreme Court observed in *Loper Bright*, “statutes, no matter how impenetrable, do—in fact, must—have a single, best meaning. That is the whole point of having written statutes; ‘every statute’s meaning is fixed at the time of enactment.’” *Id.* at 2266 (quoting *Wis. Cent. Ltd. v. United States*, 585 U.S. 274, 284 (2018)).

As applied in this case, there is a direct conflict between the statute and the regulation on which the Commissioner relies. Section 6235(a)(2) provides the period for when the Commissioner can make an adjustment for a partnership in the event a modification request for the imputed underpayment is submitted to the Commissioner. The plain text of that statute states that date is “270 days . . . after the date” everything required for a complete modification request under section 6225(c) “is so submitted.” I.R.C. § 6235(a)(2). The regulation interprets that date to be 270 days after “[t]he date the period for requesting modification ends.” Treas. Reg. § 301.6235-1(b)(2)(i)(A). As is made evident in this case, those are different dates, and the regulation must give way to the statute.

Perhaps recognizing the tension between section 6235(a)(2) and the regulation interpreting that provision, the Commissioner directs the Court to section 6225(c). He argues that section 6225(c)(1) provides the Commissioner with “broad authority to establish procedures with respect to modification under section 6225(c)” and that the definition in Treasury Regulation § 301.6235-1(b)(2) was promulgated pursuant to that authority. The Commissioner connects the limitations period under section 6235(a) to the “broad authority” under section 6225(c) by noting that section 6235(a)(2) explicitly references “everything required to be submitted” pursuant to

section 6225(c). But even where Congress expressly delegates broad rulemaking authority, that authority does not extend to contradicting statutory text. *See Varian Med. Sys., Inc. & Subs. v. Commissioner*, 163 T.C. 76, 107 (2024).

The Commissioner argues that the 270-day modification window remains open unless the partnership submits Form 8981, which JM Assets did not submit. The Commissioner states the failure to submit Form 8981 communicates that the partnership may make additional submissions during the 270-day period under section 6225(c)(7). Therefore, whether everything that was required to be submitted was actually submitted could not be determined until the end of the modification period.

The Commissioner's argument ignores two of his own regulations. Form 8981 is a form used to waive the modification period. After the Commissioner mails a NOPPA, he must wait 270 days before he can mail an FPA. I.R.C. § 6231(b)(2)(A). But the partnership can elect to waive that waiting period. *Id.* By regulation, the Commissioner deems the waiver of that waiting period to also end the modification period. Treas. Reg. § 301.6235-1(b)(2)(i)(B). But nothing in the statute (or regulations) requires a waiver for a submission to be complete.

Factually, there is no genuine dispute that JM Assets submitted everything required to be submitted under section 6225(c) on February 14, 2023. That was the date JM Assets submitted Form 8980 to request modification of the imputed underpayment. At no time after that did JM Assets submit further information, nor did the Commissioner request additional information. And the Commissioner approved the modification request. Taken together, these facts establish that JM Assets submitted everything required to be submitted with its initial submission. Under section 6235(a)(2), the Commissioner had 270 days from receipt of that submission to issue an FPA. The date that is 270 days from February 14, 2023, is November 11, 2023, a Saturday. Thus the 270-day period lapsed on Monday, November 13, 2023. *See* I.R.C. § 7503. The FPA issued on December 1, 2023, was untimely.

#### IV. Commissioner's Out-of-Time Motions

Belatedly, the Commissioner offers an alternative argument in the event the Court finds that the FPA was untimely. The

Commissioner filed two Motions, one seeking leave to file an amendment to answer out of time and the other seeking to supplement his objection to JM Assets' pending Motion. Each of these documents seeks to add the same alternative argument, that the FPA is timely because of a substantial omission of income. Section 6235(c)(2) provides that, if there is a substantial omission of income as defined by section 6501(e)(1)(A), the three-year period to make a partnership adjustment under section 6235(a) is extended to six years. The Commissioner argues that JM Assets omitted income in excess of 25% of the gross income disclosed on its return, which would be a substantial omission of income under section 6501(e)(1)(A).

When evaluating whether to grant a motion for leave to file a document such as a motion out of time, the Court may look to the merits of the underlying motion. *Bedrosian v. Commissioner*, 144 T.C. 152, 155 (2015). To do so we must consider the relative merits of the Commissioner's argument that JM Assets omitted income in excess of 25% of the amount reported on its 2018 return.

#### *A. JM Assets' Reporting and the Commissioner's Adjustment*

JM Assets disclosed income from what it treated as installment sales on several Forms 6252 included with its 2018 return. Those forms detail the sale of five properties called "Kittyhawk," "Old Lockhart," "M 14.49ac 290W," "7ac US-1," and "FM 2978-51st-Summerfield." The forms include details showing how the installment sale income was calculated, including the selling prices of \$88,000, \$563,065, \$1,453,000, \$564,000, and \$7,329,705, respectively. The NOPPA issued to JM Assets references the Forms 6252 and these selling prices. Further, the NOPPA states adjustments to the partnership's section 1231 gain was related to sales "on the 1065 for 2018 on the 6252." The section 1231 adjustment on the NOPPA was the same adjustment documented on the FPA.

#### *B. Period of Limitations Under Section 6235(c)(2)*

Section 6235(c)(2) extends the period of limitations under section 6235(a) to make a partnership adjustment. The period of limitations is increased from three years to six years if "any partnership omits from gross income an amount properly

includible therein and such amount is described in subparagraph (A) or (C) of section 6501(e)(1).” I.R.C. § 6235(c)(2).

Section 6501 sets forth the rules limiting the time during which the amount of any tax can be assessed and collected. Section 6501(a) requires that the Commissioner assess tax within three years after the taxpayer’s return is filed or deemed filed. *See Estate of Sanders v. Commissioner*, T.C. Memo. 2018-104, at \*56, *supplementing* 144 T.C. 63 (2015). The three-year period of assessment is extended to six years in the case of a substantial omission of gross income under section 6501(e)(1)(A). *See Intermountain Ins. Serv. of Vail, LLC v. Commissioner*, 134 T.C. 211, 213 (2010), *supplementing* T.C. Memo. 2009-195, *rev’d and remanded*, 650 F.3d 691 (D.C. Cir. 2011), *vacated and remanded*, 566 U.S. 972 (2012). For the purposes of section 6501(e)(1)(A), an omission from gross income is “substantial” if it is “in excess of 25 percent of the amount of gross income stated in the return.”

### C. Substantial Omission of Income

The test for whether there is a substantial omission of income under section 6501(e) may be expressed as a fraction where “[t]he numerator is the amount of properly includable gross income that was omitted from a taxpayer’s return, and the denominator is ‘the amount of gross income stated in the return.’” *Harlan v. Commissioner*, 116 T.C. 31, 40 (2001) (quoting I.R.C. § 6501(e)(1)(A)). To evaluate whether JM Assets has a substantial omission of income, we must further define the numerator and the denominator.

An omission of income occurs when the face of the return does not provide a clue as to the existence of the omitted item, thus placing the Commissioner at a disadvantage in determining the accuracy of the return. *See Colony, Inc. v. Commissioner*, 357 U.S. 28, 36 (1958). The Supreme Court in *Colony* determined that the statutory purpose for extending the period of limitations is “to give the Commissioner additional time to review a taxpayer’s return when the taxpayer had reported no information about a given transaction.” *Barkett v. Commissioner*, 143 T.C. 149, 153 (2014). Under section 6501(e)(1)(B)(iii), any amount disclosed in the return, or in a statement attached to the return in a manner adequate to apprise the Secretary of the nature and amount of such

item, is not considered omitted income. In contrast, where a taxpayer merely discloses net gain so that the Commissioner is not apprised of the nature, amount, or existence of gain, the amount is not adequately disclosed. *Highwood Partners v. Commissioner*, 133 T.C. 1, 21–22 (2009).

The Commissioner contends JM Assets omitted income from its return in an amount in excess of 25% of its reported income. In the Commissioner’s lodged First Amendment to Answer and First Supplement to Objection to Motion to Dismiss for Lack of Jurisdiction, the Commissioner argues that JM Assets omitted \$5,499,437 which is 34% of \$16,017,287. The Commissioner states the omitted gross income consists of “Schedule K, Net Section 1231 gains” that were described in the FPA.

JM Assets argues that its Forms 6252 adequately disclosed the income the Commissioner alleges is omitted. More specifically, it argues that, because the Commissioner was put on notice of the income, it cannot be considered omitted for the purposes of extending the period of limitations to six years under section 6501(e)(1)(A). We agree with JM Assets.

The income that the Commissioner identifies as omitted was disclosed in the return or in a statement attached to the return, and it is not treated as having been omitted. The alleged omission of income does not stem from a failure to report an accurate sale price, but rather it stems from an increase in section 1231 gain. In *Colony*, the Supreme Court held that understating gross income on an income tax return by misstating cost items or basis is not an “omi[ssion] from gross income [of] an amount properly includible therein” for the purposes of extending the period of limitations under section 275(c) of the 1939 Code (later reenacted as section 6501(e)(1)(A) in the 1954 Code). *Colony, Inc. v. Commissioner*, 357 U.S. at 36–37. The Supreme Court later extended the holding of *Colony* to section 6501(e)(1)(A) in *United States v. Home Concrete & Supply, LLC*, 566 U.S. 478, 490 (2012). That is the same provision to which Congress referred in section 6235(c)(2). Thus, the “clue test” of *Colony* applies with equal force to the BBA substantial omission of income rule. And under that test, JM Assets did not omit 25% of its income pursuant to section 6501(e)(1)(A).

Having concluded that the Commissioner would be unlikely to succeed on the new argument he seeks to add to the case, we return to the pending Motions for Leave. The Commissioner's two Motions seek to add to this case the argument that JM Assets' return contained a substantial omission of income. That argument is supported by neither the facts nor the law. Granting the Commissioner's Motions for Leave would be futile.

### *V. Conclusion*

Section 6235(a)(2) allows the Commissioner to issue an FPA up to 270 days "after the date on which everything required to be submitted to the Secretary . . . is so submitted." JM Assets submitted everything required to be submitted on February 14, 2023. The period within which the Commissioner could issue an FPA lapsed on November 13, 2023. The Commissioner mailed the FPA after that date. It was untimely. The Commissioner's regulation, Treasury Regulation § 301.6235-1, as applied to these facts, is contrary to the Code.<sup>7</sup> Thus, we will deny the Commissioner's Motion for Partial Summary Judgment and grant JM Assets' recharacterized Motion for Summary Judgment.

Further, we will deny the Commissioner's Motions through which he seeks leave to add the alternative argument that the JM Assets return had a substantial omission of income. That argument is supported by neither the facts nor the law and would be futile.

To reflect the foregoing,

*An appropriate order and decision will be entered.*

Reviewed by the Court.

URDA, *C.J.*, and KERRIGAN, NEGA, PUGH, ASHFORD, COPELAND, JONES, TORO, GREAVES, MARSHALL, WEILER, WAY, LANDY, ARBEIT, GUIDER, JENKINS, and FUNG, *J.J.*, agree with this opinion of the Court.

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<sup>7</sup> We express no view as to the application of this regulation to situations in which a partnership does not submit everything required to be submitted.

MOXON CORPORATION, PETITIONER *v.* COMMISSIONER  
OF INTERNAL REVENUE, RESPONDENT

Docket No. 727-18L.

Filed July 2, 2025.

P corporation was a partner in entity AD. R issued a Notice of Final Partnership Administrative Adjustment regarding AD, setting forth R's disallowance of purported losses and assertion of an I.R.C. § 6662(h) penalty. R's determinations were largely sustained in a partnership-level proceeding. R then issued P affected items Notices of Deficiency determining deficiencies and I.R.C. § 6662(h) penalties based on the result of the partnership-level proceeding. However, R mailed the affected items Notices of Deficiency to an incorrect address. P did not file a Tax Court petition in response to those Notices, and R assessed the deficiencies and penalties. R later issued collection notices to P, and P requested a collection due process hearing. R determined that the collection actions should be sustained and issued P a Notice of Determination stating the same. P filed a Petition with this Court in response. R eventually realized that he had mailed the affected items Notices of Deficiency to an incorrect address. R requested that this case be remanded for a supplemental collection due process hearing, after which R issued P a Supplemental Notice of Determination reflecting the Appeals officer's determination that the deficiencies were subject to deficiency procedures and would be abated. However, the Appeals officer determined that the penalties were not subject to deficiency procedures and would not be abated. The parties filed Cross-Motions for Partial Summary Judgment regarding certain of the Appeals officer's determinations with respect to the penalties. P claimed that the Appeals officer erred, arguing that (1) the penalties are subject to deficiency procedures and/or (2) no penalties can apply because "the penalties are a function of the tax, which is zero." R claimed that the Appeals officer correctly determined that (1) the penalties are not subject to deficiency procedures and (2) the fact that the relevant deficiencies were improperly assessed does not affect R's assessments regarding, and ability to collect, the penalties. *Held:* The I.R.C. § 6662(h) penalties at issue are not subject to deficiency procedures pursuant to I.R.C. § 6230(a)(2)(A)(i). *Held, further,* the fact that the relevant deficiencies were improperly assessed does not affect R's assessments regarding, and ability to collect, the I.R.C. § 6662(h) penalties.

*Harriet A. Wessel and Jasper G. Taylor III*, for petitioner.  
*Sharmeen Ladhani, Brooke N. Stan, Sheila R. Pattison,*  
*Christina D. Sullivan, and Siang L. Sang*, for respondent.

## OPINION

GOEKE, *Judge*: Pending before the Court are Cross-Motions for Partial Summary Judgment filed by the parties on March 18, 2025. The facts described below are stated solely for the purpose of deciding the Motions for Partial Summary Judgment and are not findings of fact for this case. *See Sundstrand Corp. v. Commissioner*, 98 T.C. 518, 520 (1992), *aff'd*, 17 F.3d 965 (7th Cir. 1994). Considering the facts and law, we will grant respondent's Motion for Partial Summary Judgment and deny petitioner's Motion for Partial Summary Judgment.

*Background*

Petitioner was a partner in AD Global FX Fund, LLC (AD Global), during 1999.<sup>1</sup> In 1999 AD Global used paired foreign currency options to generate tens of millions of dollars in purported losses for AD Global's partners, including petitioner. On October 15, 2004, respondent issued a Notice of Final Partnership Administrative Adjustment (FPAA) to AD Global's tax matters partner (TMP) disallowing the purported losses and asserting various alternative penalties, including a 40% gross valuation misstatement penalty pursuant to section 6662(h).<sup>2</sup> In 2005 AD Global's TMP filed a Complaint contesting respondent's determinations in the U.S. District Court for the Southern District of New York. AD Global's case was consolidated with related cases, and on June 25, 2014, the consolidated cases were dismissed pursuant to a stipulation by the parties. *See AD Global FX Fund, LLC v. United States (AD Global)*, No. 05-CV-223 (S.D.N.Y. June 25, 2014). Respondent's determinations, as set forth in the FPAA regarding AD Global, were almost entirely sustained.<sup>3</sup>

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<sup>1</sup> Before its repeal, the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub. L. No. 97-248, §§ 401–407, 96 Stat. 324, 648–71, governed the tax treatment and audit procedures for many partnerships, including AD Global.

<sup>2</sup> Unless otherwise indicated, all statutory references are to the Internal Revenue Code (Code), Title 26 U.S.C., in effect at all relevant times, regulation references are to the Code of Federal Regulations, Title 26 (Treas. Reg.), in effect at all relevant times, and Rule references are to the Tax Court Rules of Practice and Procedure. We round monetary amounts to the nearest dollar.

<sup>3</sup> Certain of respondent's adjustments to AD Global's partners' outside bases were not sustained.

Pursuant to section 6230(a)(2)(A)(i), in March and April 2015 respondent mailed petitioner affected items Notices of Deficiency (SNODs) that were based on the outcome in *AD Global*. However, respondent mailed the SNODs to an incorrect address. One of the SNODs pertained to petitioner's 1999 tax year and reflected respondent's determination of a \$12,615,331 deficiency and a \$5,046,132 section 6662(h) penalty. The other SNOD pertained to petitioner's 2000 tax year and reflected respondent's determination of a \$1,134 deficiency and a \$454 section 6662(h) penalty.<sup>4</sup> Petitioner did not file a petition with this Court in response to either SNOD, and respondent assessed the deficiencies and penalties on August 17, 2015.

Petitioner did not pay the assessed deficiencies or penalties. On May 2, 2017, respondent issued petitioner a Notice of Federal Tax Lien Filing and Your Right to a Hearing (Notice of Lien). On May 30, 2017, respondent issued petitioner a Final Notice—Notice of Intent to Levy and Notice of Your Right to a Hearing (Notice of Intent to Levy). Petitioner timely filed Forms 12153, Request for a Collection Due Process or Equivalent Hearing, in response to both the Notice of Lien and the Notice of Intent to Levy. After a Collection Due Process (CDP) hearing (during which petitioner offered to compromise the outstanding liabilities for \$1,000), an Appeals officer determined that the lien and the proposed levy should be sustained. On December 20, 2017, a Notice of Determination setting forth those determinations was issued to petitioner. Petitioner timely petitioned this Court for review. Petitioner was incorporated and maintained its principal office in New York State when it filed its Petition.

Respondent's counsel later discovered that the administrative record did "not include a copy of the [SNODs] or certified mail list or any other indication that respondent's [Appeals] Officer verified that the [SNODs] w[ere] mailed to petitioner's last known address." At respondent's request (with no objection from petitioner) we ordered that the case be remanded to the Internal Revenue Service (IRS) Independent Office of Appeals for a supplemental CDP hearing. After the supplemental CDP hearing was held, petitioner was issued

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<sup>4</sup> The small deficiency for 2000 pertained to a disallowed net operating loss carryforward from 1999.

a Supplemental Notice of Determination. The Appeals officer wrote in the Supplemental Notice of Determination that

Appeals cannot verify the IRS complied with proper procedures for mailing the [SNODs] per IRM 8.22.5.4.2.1.1 for the periods ending December 31, 1999, and December 31, 2000. Although the SNODs were mailed via certified mail, there is no evidence to support they were properly mailed to the taxpayer's last known address. Deficiencies of \$12,615,331 in 1999 and \$1,134 in 2000 are partner-level determinations and are subject to deficiency procedures. Since proper procedures cannot be verified, those assessments are invalid and will be abated. However, per IRC 6230(a)(2)(A)(i), the penalties of \$5,046,132.40 in 1999 and \$453.60 in 2000 are not subject to deficiency procedures, so the last known address issues with the notices of deficiency are not relative [sic] with respect to any assessment of such penalties and are those [sic] assessments are sustained.

There is no dispute that the deficiencies for 1999 and 2000 will be abated. However, petitioner argued that the penalties should also be abated, while respondent argued that the Appeals officer properly sustained the penalties. On March 18, 2025, the parties filed Cross-Motions for Partial Summary Judgment regarding certain of the Appeals officer's determinations with respect to the penalties.<sup>5</sup> Each party filed a Response on April 17, 2025.

### *Discussion*

#### *I. Summary Judgment and Standard of Review*

Summary judgment is intended to expedite litigation and avoid unnecessary and expensive trials. *Fla. Peach Corp. v. Commissioner*, 90 T.C. 678, 681 (1988). We may grant summary judgment when, as in this case, there is no genuine dispute as to any material fact and a decision may be rendered as a

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<sup>5</sup> There is a section 6751 issue in dispute that the parties did not address in their Motions for Partial Summary Judgment. The parties agree that the U.S. Court of Appeals for the Second Circuit (to which an appeal of this case would presumably lie, see § 7482(b)(1)(B)) is considering the same issue in *Warner Enterprises, Inc. v. Commissioner*, No. 24-611 (2d Cir. filed Feb. 29, 2024), and that the decision in that case will be controlling precedent in petitioner's case. Having considered the section 6751 issue (including our ruling for the Commissioner on the issue in *Warner Enterprises, Inc. v. Commissioner*, T.C. Memo. 2022-85) we judge that there is no reason to wait for the Second Circuit before ruling on the parties' Motions for Partial Summary Judgment. We will address the section 6751 issue separately, after the Second Circuit has ruled.

matter of law. Rule 121(a)(2); *Sundstrand Corp.*, 98 T.C. at 520. A partial summary adjudication is appropriate if some but not all issues in the case may be decided as a matter of law, even though not all the issues in the case are disposed of. *See* Rule 121(a)(1); *Turner Broad. Sys., Inc. & Subs. v. Commissioner*, 111 T.C. 315, 323–24 (1998).

In a CDP case our standard of review depends on whether the underlying liability is at issue. When the taxpayer's underlying liability is properly at issue, we review the IRS's determinations regarding such liabilities de novo. *Seago v. Commissioner*, 114 T.C. 604, 610 (2000); *Goza v. Commissioner*, 114 T.C. 176, 181–82 (2000). Section 6330(c)(2)(B) permits taxpayers to challenge the existence or amount of their underlying tax liability only if they did not receive a notice of deficiency or otherwise have a prior opportunity to contest that liability. A taxpayer is precluded from disputing the underlying tax liability in a CDP case before this Court if the taxpayer failed to properly raise the merits of the underlying tax liability as an issue during the CDP hearing. *Giamelli v. Commissioner*, 129 T.C. 107, 112–15 (2007).

When the underlying liability is not at issue, we review the IRS's determinations for abuse of discretion. *Hoyle v. Commissioner*, 131 T.C. 197, 200 (2008), *supplemented by* 136 T.C. 463 (2011); *Goza*, 114 T.C. at 182. Abuse of discretion exists when a determination is arbitrary, capricious, or without sound basis in fact or law. *See* *Murphy v. Commissioner*, 125 T.C. 301, 320 (2005), *aff'd*, 469 F.3d 27 (1st Cir. 2006). When a determination by an Appeals officer is predicated upon an error of law, that determination constitutes an abuse of discretion. *See* *Alessio Azzari, Inc. v. Commissioner*, 136 T.C. 178, 191 (2011) (citing *Swanson v. Commissioner*, 121 T.C. 111, 119 (2003)), *supplemented by* T.C. Memo. 2012-310.

In his Response to petitioner's Motion for Partial Summary Judgment, respondent briefly argued that "[s]ince petitioner did not raise any underlying liability challenges to the penalty liabilities [during the CDP hearing], petitioner is precluded from doing so now at the Tax Court level." Petitioner argued that it is not challenging the underlying penalty liabilities, only the Appeals officer's determination that the penalties should not be abated as a matter of law. Petitioner claimed

that the Appeals officer's determination was predicated upon an error of law, which constituted an abuse of discretion.

Considering the basis for the Appeals officer's determination set forth in the Supplemental Notice of Determination, we agree with petitioner. The Supplemental Notice of Determination correctly reflects that the Appeals officer considered determinations regarding the correctness of the assessments to be part of their verification that "the requirements of any applicable law or administrative procedure have been met." See § 6330(c)(1). While there is no indication in the administrative record that petitioner specifically raised penalty assessment issues during the supplemental CDP hearing, we "review the Appeals officer's verification under section 6330(c)(1) without regard to whether [a] taxpayer raised it at the Appeals hearing" if the taxpayer raised the issue before this Court in a timely manner. *Hoyle*, 131 T.C. at 202–03; see Rule 331(b)(4). The Appeals officer's determination not to abate the penalty assessments was raised by petitioner before this Court in a timely manner after the supplemental CDP hearing. Accordingly, we will review whether that determination was based on a correct interpretation of applicable law.

## II. *Summary of the Parties' Arguments*

Petitioner alleged that the Appeals officer erred as a matter of law in determining that the penalties should not be abated. Petitioner made two primary arguments in support of its position. First, petitioner argued that deficiency procedures apply to the penalties and the penalties should therefore be abated because the SNODs were not sent to petitioner's last known address. Second, petitioner argued that the penalties should be abated because "the penalties are a function of the tax, which is zero."

Respondent alleged that the Appeals officer correctly determined that the penalties should not be abated. Respondent argued that the "penalties were determined to be applicable at the partnership-level, and deficiency procedures do not apply to such penalties." Disputing petitioner's second argument, respondent argued that "[p]etitioner's tax liabilities can be determined even when assessment [of the tax liabilities] is prohibited" and that penalties based on such tax liabilities were properly assessed and may be collected.

### III. *Whether Deficiency Procedures Apply to the Penalties*

The purpose of TEFRA was to provide a method for uniformly and efficiently adjusting and resolving items of partnership income, loss, deduction, or credit without the necessity of separate proceedings for each partner. *See Boyd v. Commissioner*, 101 T.C. 365, 369 (1993); *Maxwell v. Commissioner*, 87 T.C. 783, 787 (1986). Pursuant to TEFRA procedures, adjustments to partnership items and the applicability of penalties which relate to such adjustments are determined in a partnership-level proceeding and not in a partner-level proceeding. § 6221. The deficiencies set forth in the SNODs were based on adjustments to partnership items determined in *AD Global*, which was a partnership-level proceeding. Likewise, the applicability of the section 6662(h) penalties set forth in the SNODs was determined in *AD Global*.

Adjustments to partnership items in a partnership-level proceeding may result in adjustments to the tax liabilities of individual partners. Once adjustments to partnership items become final, the Commissioner must generally initiate further action at the partner level to adjust an individual partner's tax liability. If such action gives rise to an affected item (i.e., items affected by a partnership item adjusted at the partnership level, *see* § 6231(a)(5)) that requires partner-level determinations, it is subject to the deficiency procedures under sections 6211 through 6216, and the Commissioner must issue an affected items notice of deficiency to the partner before assessing the tax. *See* § 6230(a)(2)(A)(i).

Penalties determined to apply in a partnership-level proceeding do not follow the same track. Rather, section 6230(a)(2)(A)(i) exempts “penalties, additions to tax, and additional amounts that relate to adjustments to partnership items” from “[d]eficiency proceedings.” We have held that “[p]ursuant to section 6230(a)[, a section 6662(h) penalty determined to apply in a partnership-level proceeding] may be directly assessed as a computational adjustment, notwithstanding the need for partner-level determinations.” *Thompson v. Commissioner*, 137 T.C. 220, 239 (2011), *rev'd and remanded on other grounds*, 729 F.3d 869 (8th Cir. 2013). Even if the Commissioner issues an affected items notice of deficiency that includes such a penalty, “[t]he issuance of [such] a purported notice of deficiency cannot trigger deficiency procedures where

none applies.” *Id.* We have similarly held “that the deficiency procedures [do not] apply to the assessment of any partnership-item penalty determined at the partnership level, regardless of whether further partner-level determinations are required.” *Domulewicz v. Commissioner*, 129 T.C. 11, 23 (2007), *aff’d in relevant part, remanded in part sub nom. Desmet v. Commissioner*, 581 F.3d 297 (6th Cir. 2009). We also addressed this issue in *Gunther v. Commissioner*, T.C. Memo. 2019-6, at \*14, *aff’d*, 789 F. App’x 836 (11th Cir. 2020), ruling in that deficiency case “that we have no jurisdiction in this pre-payment forum to consider . . . penalties determined at the partnership level.” Because we lacked jurisdiction with respect to the penalties at issue, we held that “we have no authority to enjoin . . . collection or assessment” of the penalties, denied the taxpayers’ motion to restrain the collection or assessment inasmuch as it pertained to the penalties, and granted the Commissioner’s motion to dismiss the penalties from the case. *Id.* at \*14–15. Opinions issued by other courts are in line with our precedent. See *United States v. Woods*, 571 U.S. 31, 42 n.2 (2013) (discussing the Commissioner’s ability “to assess the 40-percent penalty directly”); *Highpoint Tower Tech. Inc. v. Commissioner*, 931 F.3d 1050, 1060 (11th Cir. 2019) (“[Section] 6230(a)(1) and (a)(2)(A)(i) clearly exclude[s] the [section 6662(h)] penalty at issue from Tax Court deficiency jurisdiction . . . .”); *Chai v. Commissioner*, 851 F.3d 190, 197 n.5 (2d Cir. 2017) (“Penalties determined in a partnership proceeding, even if they require a partner-level substantive determination, are excepted from the affected-item notice of deficiency requirement.”), *aff’g in part, rev’g in part on another issue* T.C. Memo. 2015-42; *Gosnell v. United States*, 525 F. App’x 598, 600 (9th Cir. 2013) (“[I]t was proper for the IRS to directly assess [the taxpayer’s] share of the penalties as a computational adjustment without following deficiency procedures, regardless of whether partner-level determinations were required to do so.”).

Although the statutory text and precedent favor respondent’s position, petitioner urges us to side with it. Considering the clear precedent regarding this issue, we will only briefly address petitioner’s arguments.

Some of petitioner’s arguments are based on strained readings of relevant statutes. For example, petitioner argued that

section 6230(a)(2)(A)(i) provides, in relevant part: “Subchapter B shall apply to any deficiency attributable to . . . affected items which require partner level determinations (other than penalties, additions to tax, . . .)” The penalties here are attributable to affected items which require partner level determinations. Therefore, by inverse inference, section 6230(a)(2)(A)(i) literally provides that subchapter B does not *necessarily* apply to a deficiency attributable to the penalties in this case. Indeed, given that a true statement’s inverse is not necessarily true, while subchapter B contains procedures for initiating and maintaining deficiency proceedings, it would be incorrect to conclude, as the [Appeals officer] apparently did, that section 6230(a)(2)(A)(i) establishes that these procedures have no relevance to the penalties in this case.

(Citations and footnote omitted.) Petitioner relatedly argued that

support for the proposition that section 6230(a)(2)(A)(i) establishes only that a taxpayer may not dispute . . . penalties in a deficiency proceeding follows from the headings of relevant Code sections. The headings in section 6230 refer to “Deficiency *Proceedings*” while, by contrast, the heading in subchapter B is “Deficiency *Procedures* in the Case of Income, Estate, Gift and Certain Excise Taxes.” The logical inference . . . is that deficiency *proceedings* do not apply to penalties subject to section 6230(a)(2)(A)(i) even though deficiency *procedures* may apply.

(Footnote omitted.) Petitioner concluded that the “only effect [of section 6230(a)(2)(A)(i)] is to preclude a partner from disputing, in a deficiency proceeding only, a penalty approved in a TEFRA proceeding and asserted against the partner through an affected items SNOD. That is, while deficiency *proceedings* do not apply to the penalties, deficiency *procedures* do.” Petitioner did not address our caselaw ruling “that the deficiency *procedures* [do not] apply to the assessment of any partnership-item penalty determined at the partnership level, regardless of whether further partner-level determinations are required.” *Domulewicz*, 129 T.C. at 23 (emphasis added). We reject petitioner’s argument and reaffirm our precedent for the reasons discussed at length in *Domulewicz* and other cases cited in this *Discussion* Part III.<sup>6</sup>

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<sup>6</sup> We note that the captions/headings petitioner referenced in its arguments do “not have the force of law, *see* sec. 7806(b) (providing that no ‘descriptive matter relating to the content of this title [shall] be given any legal effect’), and cannot cloud the plain words of the statute.” *Rowen v. Commissioner*, 156 T.C. 101, 112 n.9 (2021) (first citing *United States v. Reorganized CF & I Fabricators of Utah, Inc.*, 518 U.S. 213, 222–23 (1996); then citing *N.Y. & Presbyterian Hosp. v. United States*, 881 F.3d 877, 886 n.13 (Fed. Cir.

Petitioner also argued that

Respondent evidently believes that deficiency *procedures* continue to apply to the[] penalties: Respondent inserted penalties in the SNODs and assessed them at the same time as the taxes, more than 90 days after the April 24, 2015 date on the SNODs, as opposed to simply assessing them immediately without any SNODs, as Respondent would have done had the penalties been assessable penalties.<sup>17</sup> . . . If Respondent had instead believed that the penalties did not depend on the SNODs' validity, there would be no apparent reason for him not to have assessed them immediately, as soon as the SNODs were issued.

Petitioner did not address the fact that the Commissioner also included penalties in the affected items notices of deficiency at issue in *Thompson*, *Domulewicz*, and *Gunther*. The penalties at issue were properly dismissed from each of those cases; the fact that they were included in affected items notices of deficiency was of no consequence. Similarly, the fact that respondent included penalties in the SNODs at issue in this case is of no consequence; deficiency procedures simply do not apply to the penalties.

Finally, petitioner pointed to a lengthy footnote in *Thompson* in which we discussed “ambiguity in the parenthetical phrase ‘other than penalties, additions to tax, and additional amounts that relate to adjustments to partnership items’ at the end

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2018); and then citing Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 222 (2012)). The meaning of section 6230(a) is clear, and petitioner's attempt to draw a distinction between “proceedings” and “procedures” in the captions/headings is not convincing.

<sup>7</sup> Petitioner stated that it “believes [it] to be the case” that respondent's penalty assessments were timely. We agree that the penalty assessments were timely. Section 6229(d) provides that the period of limitations with respect to partnership and affected items is suspended for one year after the date that a court decision in a partnership proceeding becomes final. *AD Global* was dismissed on June 25, 2014. That dismissal operates as a decision, which became final on August 24, 2014. See § 6226(h); Fed. R. App. P. 4(a)(1)(B). Respondent assessed the penalties on August 17, 2015, which was before August 24, 2015, and therefore timely considering only the dismissal date. See § 6229(d).

Furthermore, *AD Global's* 1999 tax return was not filed until October 6, 2003, and respondent issued an FPAA regarding *AD Global* on October 15, 2004. Accordingly, only slightly more than one year of the three-year period of limitations had run at the time the FPAA was issued. See § 6229(a). The FPAA and the subsequent partnership proceeding caused the running of the period of limitations to be suspended until August 24, 2015. See § 6229(d). As of that date, nearly two years remained on the period of limitations.

of sec[ti]on] 6230(a)(2)(A)(i).” See *Thompson*, 137 T.C. at 239 n.24. We concluded that “[d]espite having issued [an affected items notice of deficiency that included a penalty determined to apply in a partnership-level proceeding], the Commissioner can proceed with a direct assessment and collection of the penalty, limiting the taxpayer partner’s recourse to a suit or claim for refund.”<sup>8</sup> *Id.* (citing § 6230(c)(4)). Petitioner argued that the footnote is incorrect, and that any ambiguity should be resolved in petitioner’s favor.<sup>9</sup> Petitioner pointed out that we resolved the ambiguity by “turn[ing] to [Treasury Regulation § 301.6231(a)(6)-1(a)(3)] for guidance.” *Id.* We cited *Mayo Foundation for Medical Education & Research v. United States*, 562 U.S. 44, 55–56 (2011), which clarified “that the Commissioner’s regulatory pronouncements are generally entitled to the standard of deference set forth in *Chevron U.S.A. Inc. v. Natural Res. Def. Council*, 467 U.S. 837 (1984).” *Thompson*, 137 T.C. at 239 n.24. Petitioner claimed that “[r]esort to regulations to clarify what the court believes to be a statutory ambiguity is no longer valid after” the Supreme Court’s ruling in *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244, 2266 (2024) (overruling *Chevron* and stating that if a government agency’s interpretation of a statute “is not the best, it is not permissible”).

Even considering section 6230(a)(2)(A)(i) under the *Loper Bright* standard, we would still rule for respondent. Although we previously noted a certain amount of “ambiguity” in section 6230(a)(2)(A)(i), *Thompson*, 137 T.C. at 239 n.24, the statute clearly favors respondent’s position overall, see *Domulewicz*, 129 T.C. at 22 (“Under a plain reading of [the Taxpayer Relief Act of 1997, Pub. L. No. 105-34, § 1238(b)(2), 111 Stat. 788, 1026], the effect of th[at] amendment was to remove partnership-item penalties from the deficiency procedures . . . .”); see also *Hamel v. Commissioner*, T.C. Memo. 2025-19, at \*9–10 (addressing a similar challenge regarding

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<sup>8</sup> In a later case we held that taxpayers may also raise partner-level defenses to such penalties in a CDP case. *McNeill v. Commissioner*, 148 T.C. 481, 489 (2017).

<sup>9</sup> Petitioner similarly argued that a dissent in *Thompson* written by the same Judge that wrote this Opinion is correct and favors petitioner’s position. However, that dissent pertained to deficiencies determined in the affected items notice of deficiency at issue and did not address the penalties. See *Thompson*, 137 T.C. at 240–42 (Goeke, J., dissenting).

section 6230(a)(2)(A)(i) made in a motion for reconsideration and concluding that “[o]ur foregoing statutory analysis [in *Domulewicz*] holds true, notwithstanding the decision in *Loper Bright*”), supplementing T.C. Memo. 2024-62.<sup>10</sup> Furthermore, we have found, and petitioner has cited, no case in which a court has interpreted section 6230(a)(2)(A)(i) in the same manner that petitioner has. Rather, caselaw (cited throughout this *Discussion* Part III) entirely supports respondent’s position.

In addition the Supreme Court cautioned that by overruling *Chevron* it did not “call into question prior cases that relied on the *Chevron* framework. The holdings of those cases . . . are still subject to statutory *stare decisis* despite [the Supreme Court’s] change in interpretive methodology.” *Loper Bright*, 144 S. Ct. at 2273. Regardless of the extent to which the holding in *Thompson* relies on the standard of review set forth in *Chevron*, that holding is entitled to *stare decisis*.

We again hold that penalties determined in a partnership-level proceeding are not subject to deficiency procedures pursuant to section 6230(a)(2)(A)(i). Rather, such penalties are assessable by the Commissioner. Taxpayers may raise any partner-level defenses to the penalties in a refund action or in a CDP case. § 6230(c)(1)(C), (4); *McNeill*, 148 T.C. at 489.

#### IV. *Effect of Deficiency Abatements on Penalties*

The parties agree that the deficiencies included in the SNODs will be abated. What effect, if any, this has on the penalties at issue presents an issue of first impression in this Court.

Section 6662(a) provides that “[i]f this section applies to any portion of an underpayment of tax required to be shown on a return, there shall be added to the tax an amount equal to 20 percent of the portion of the underpayment to which

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<sup>10</sup> Opinions from other Courts and, indeed, many of our own opinions do not note any ambiguity in section 6230(a)(2)(A)(i). See, e.g., *Highpoint Tower Tech. Inc. v. Commissioner*, 931 F.3d at 1060 (describing section 6230(a)(2)(A)(i) as “unambiguous”); *Gunther*, T.C. Memo. 2019-6, at \*11–12 (discussing “the plain language of” section 6230(a)(2)(A)(i)). However, we need not reconsider our statement in *Thompson*, 137 T.C. at 239 n.24, regarding the existence of “ambiguity” in section 6230(a)(2)(A)(i) because we would rule for respondent even if we again concluded that the statute was ambiguous.

this section applies.”<sup>11</sup> The term “underpayment” is defined in section 6664(a) as follows:

Sec. 6664(a). Underpayment.—For purposes of this part, the term “underpayment” means the amount by which any tax imposed by this title exceeds the excess of—

(1) the sum of—

(A) the amount shown as the tax by the taxpayer on his return, plus

(B) amounts not so shown previously assessed (or collected without assessment), over

(2) the amount of rebates made.

For purposes of paragraph (2), the term “rebate” means so much of an abatement, credit, refund, or other repayment, as was made on the ground that the tax imposed was less than the excess of the amount specified in paragraph (1) over the rebates previously made.

Paragraphs (1)(B) and (2) are not relevant in this case.

Petitioner argued that there is no underpayment to which a section 6662 penalty may apply. Petitioner’s arguments center on the term “tax imposed” in section 6664(a). Petitioner claimed that “a tax cannot be deemed ‘imposed’ . . . where the taxing authority has decreed that the tax need not be paid” and that “for a tax to be deemed ‘imposed’, at a minimum it must be required to be paid.” However, we interpret the term “tax imposed” in section 6664(a) as the amount of tax imposed by Congress (through the Code) that is required to be shown on a taxpayer’s return, not an amount based on respondent’s ability to assess and collect.

We have described the “basic formula” of section 6664(a) as “(correct tax – reported tax = underpayment).” *Feller v. Commissioner*, 135 T.C. 497, 510 (2010). For reasons discussed *infra*, this formula accurately describes the first part of the formula as the “correct tax” rather than the tax that can be collected.

The Supreme Court has stated that “[i]n its numerous uses throughout the Code, it is clear that the term ‘assessment’ refers to little more than the calculation or recording of a tax liability.” *United States v. Galletti*, 541 U.S. 114, 122 (2004) (first citing § 6201; then citing § 6203; then citing § 6204; and then citing Statement of Procedural Rules, 26 C.F.R. § 601.103); *see also* § 6501(a) (“[T]he amount of any tax imposed by this

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<sup>11</sup> As relevant in this case, section 6662(h) increases the amount of a penalty to 40% in the case of a “gross valuation misstatement[.]”

title shall be assessed within 3 years after the return was filed . . . .”); *Laing v. United States*, 423 U.S. 161, 170 n.13 (1976) (describing an assessment as “essentially a bookkeeping notation” regarding a taxpayer’s account). The Supreme Court has likewise stated that “a taxpayer’s ‘liability’ for unpaid taxes” is separate from the IRS’s “official ‘assessment’ of what the delinquent taxpayer owes.” *Polselli v. IRS*, 143 S. Ct. 1231, 1239 (2023) (first citing § 6203; and then citing *Galletti*, 541 U.S. at 122). The Supreme Court has also recognized that taxes are imposed by Congress, rather than by the IRS. *See Moore v. United States*, 144 S. Ct. 1680, 1693 (2024) (noting that taxpayers sought “to differentiate the [Mandatory Repatriation Tax] from . . . other taxes long imposed by Congress” and discussing Congress’s taxing power throughout the opinion). In sum, a taxpayer’s liability for a tax imposed by Congress is distinct from whether the IRS has, or may, assess and collect that liability. *See Polselli*, 143 S. Ct. at 1239; *Galletti*, 541 U.S. at 122. This favors respondent’s position.

Other precedent also favors respondent’s position. In *Snow v. Commissioner*, 141 T.C. 238, 247 (2013), *supplementing* T.C. Memo. 2013-114, we held that “the section 6662 penalty [at issue is based] on an ‘underpayment’ amount that represents the amount of revenue that the Government was deprived of as a result of amounts actually shown on [the taxpayer’s] return.” We further stated that “[t]he underpayment . . . is equal to the true amount the Government was deprived of as a result of [the taxpayer’s] return.” *Id.* at 247–48. *Snow* supports the proposition that when determining the amount of an underpayment, the focus is on the correct amount of tax that was required to be *reported*, not on what amount the Commissioner is able to collect. *See id.*

Our ruling in *Snow* was based to a significant extent on Treasury Regulation § 1.6664-2. Treasury Regulation § 1.6664-2(a) provides that the amount of an underpayment is equal to the amount of income tax imposed minus the amount shown as the tax by the taxpayer on their return plus amounts of tax not shown on the return that were previously assessed or collected plus the amounts of rebates made. Treasury Regulation § 1.6664-2(b) provides that “the ‘amount of income tax imposed’ is the amount of tax imposed on the taxpayer under

subtitle A for the taxable year,<sup>[12]</sup> determined without regard to” tax payments, certain credits, and taxes not required to be assessed on the return. Petitioner argued that Treasury Regulation § 1.6664-2(b)

define[s] “tax imposed” as being *not* reduced for specified amounts, even though the taxpayer has previously paid them. Yet the regulations make no mention of amounts Respondent is barred from assessing for procedural reasons such as a lack of a deficiency notice or the statute of limitations. There is no reason to think that amounts would be *included* in the penalty base when the taxpayer was never obligated to pay them in the first place.<sup>[13]</sup>

(Citation omitted.) We believe the reason that Treasury Regulation § 1.6664-2(b) does not mention amounts that cannot be assessed is that compiling an exhaustive list of items not factoring into the “amount of income tax imposed” would be impractical. Furthermore, petitioner *was* obligated to report the tax at issue on its 1999 and 2000 tax returns and *was* obligated to pay that tax at the time required by Congress. That petitioner generated tens of millions of dollars in purported losses through AD Global, failed to comply with its reporting and payment obligations, and then was fortunate in that respondent mailed the SNODs to an incorrect address does not mean that petitioner “was never obligated to pay [the taxes] in the first place.” Petitioner’s argument on this point is based on a fiction and is unconvincing.

Petitioner also argued that “neither the Code nor the Treasury regulations define the term ‘imposed’ and the word may mean different things in different contexts.” However, in *Wasie v. Commissioner*, 86 T.C. 962, 969–70 (1986), we discussed the word “imposed” as used in section 4941, stating:

[The taxpayer] argues that the word “imposed” means determined by means of a statutory notice. [The Commissioner] argues that the word “imposed” does not mean that [the Commissioner] must take affirmative steps to determine, assess, or collect the tax. We agree with [the Commissioner]. The use of “imposed” in section 4941 is no different from its use in section 3 [regarding taxes imposed on individuals] or 11 [regarding taxes

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<sup>12</sup> We note that subtitle A of the Code, titled “Income Taxes,” pertains to taxes imposed, while Code sections regarding the Commissioner’s assessment and collection authority and the period of limitations are found in subtitle F, titled “Procedure and Administration.”

<sup>13</sup> Petitioner did not challenge the validity of Treasury Regulation § 1.6664-2(b).

imposed on corporations]. The imposition of the tax by Congress merely establishes its existence thereby facilitating its determination, assessment, collection, overpayment, etc., within the context of the internal revenue laws. Accordingly, in that context, it is not necessary that the tax under section 4941(a)(1) and 4941(b)(1) be determined or enforced, but only that it has been congressionally imposed and it may be determined or enforced by [the Commissioner].

In petitioner's case, respondent may not assess/enforce the tax imposed by Congress because the limitations period expired. However, respondent may, *and has*, determined the amount of petitioner's correct tax.<sup>14</sup> The correct tax (i.e., the tax imposed) can be used to calculate an underpayment upon which a section 6662 penalty may be based. *See* § 6664(a).

In *Baur v. Commissioner*, 2 T.C. 1016, 1018 (1943), *aff'd*, 145 F.2d 338 (3d Cir. 1944), we addressed section 510 of the Revenue Act of 1932, stating that "[t]he 'tax imposed by this title' means whatever tax the [taxpayer] is required to pay under the statute." Petitioner argued that *Baur* supports its position because respondent may no longer assess or collect tax for 1999 and 2000, allegedly meaning that petitioner is not required to pay anything and there is no tax imposed. However, we read *Baur* to refer to the correct tax imposed by Congress and required to be reported on a return, rather than the amount of tax that may still be assessed and/or collected by the Commissioner. *See Baur v. Commissioner*, 145 F.2d at 340 (noting that the liability at issue "ar[ose] by virtue of the positive statutory imposition of Sec. 510").

The doctrine of setoff also supports respondent's position. When a taxpayer claims a tax refund from the government, setoff allows the government to defend against such a claim by raising a tax that was not reported and/or paid, even if the Commissioner may no longer assess or collect that tax because the limitations period expired. As the Supreme Court has explained:

An overpayment must appear before refund is authorized. Although the statute of limitations may have barred the assessment and collection of any additional sum, it does not obliterate the right of the United States to retain payments already received when they do not exceed the amount which might have been properly assessed and demanded.

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<sup>14</sup> Outside of petitioner's legal argument (discussed in this Opinion) that the tax imposed is zero, petitioner has not challenged respondent's determinations of the tax imposed for 1999 and 2000.

*Lewis v. Reynolds*, 284 U.S. 281, 283 (1932). The U.S. Court of Claims has stated that

[i]n a refund action, the taxpayer cannot recover unless he has overpaid his tax. It is not enough that he can prevail on the particular items on which he sues, for he may have underpaid with respect to other components entering into that tax. Only if the overall balance moves his way can he recover. His entire tax liability under the particular tax return is therefore open for redetermination.

*Dysart v. United States*, 169 Ct. Cl. 276, 282 (1965). Thus, even when the Commissioner may no longer assess or collect a tax imposed by Congress, such liability still exists and can be used to reduce or eliminate any overpayment claimed by a taxpayer. Similarly, the tax liabilities imposed on petitioner still exist even though respondent may not assess or collect them. That tax can be (and was) used to calculate the underpayments upon which the section 6662 penalties may be based. *See* § 6664(a).

Petitioner argued that *Adams v. Commissioner*, 72 T.C. 81 (1979), *supplementing* 70 T.C. 373 (1978), *aff'd*, 688 F.2d 815 (1982) (unpublished table decision), supports its position. Petitioner claimed that in that case, “the court held that the second-level excise tax under [section] 4941(a) is ‘imposed’ when liability for it becomes final, ‘clearly not’ when the statutory notice is mailed.” *Adams* is inapposite; it involved a section 4941 “second-level tax” that was part of an odd statutory scheme in which “the second-level tax is not imposed, assuming no correction occurs, until the expiration of the correction period. However, the correction period does not expire until the decision of this Court with respect to the second-level tax becomes final.” *Adams*, 72 T.C. at 85. Noting that the statutory scheme was “anything but clear,” we stated “that for us to piece together a procedure to reach the results intended by Congress in this and subsequent cases would necessitate rewriting many portions of the statute. This we decline to do.” *Id.* at 86. Accordingly, on the basis of the specific and odd statute written by Congress, we ruled that the section 4941 tax at issue had not, and could not have, been imposed at the time the Commissioner mailed the notice of deficiency.<sup>15</sup> *See Adams*, 72 T.C. at 85–86. No such statutory

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<sup>15</sup> Section 4941 was later amended by Congress, resolving the issues with the statutory text discussed in *Adams*. Act of Dec. 24, 1980, Pub. L. No.

scheme exists in petitioner's case, and there is no basis to rule that the relevant taxes have not been imposed.

Petitioner also pointed to *Occidental Petroleum Corp. v. United States*, 231 Ct. Cl. 334, 335 n.2 (1982), in which the Court of Claims stated that a particular "'regular tax imposed' is the amount of taxes [the taxpayer] would have been required to pay if the minimum tax and the foreign tax credit provisions had not been enacted." Petitioner emphasized the term "would have been required to pay," but this is clearly a reference to what tax would have been imposed by Congress under a hypothetical situation, not a holding that a tax liability must be collectible by the Commissioner for it to be deemed imposed. *See id.*

For the reasons discussed *supra*, we hold that the deficiencies determined in the SNODs represent "tax[es] imposed" pursuant to section 6664(a). Although respondent improperly assessed, and may not collect, the associated underpayments, the relevant statutory scheme devised by Congress clearly allows for section 6662 penalties based on those underpayments to be assessed and collected. *See* § 6230(a)(2)(A)(i).

### V. Conclusion

With respect to the section 6662(h) penalties at issue, (1) the deficiency procedures do not apply and (2) the fact that the relevant deficiencies were improperly assessed does not affect respondent's assessments and ability to collect the penalties. We have considered all arguments made, and to the extent not mentioned or addressed, they are irrelevant or without merit.

To reflect the foregoing,

*An appropriate order will be issued granting respondent's Motion for Partial Summary Judgment and denying petitioner's Motion for Partial Summary Judgment.*