

165 T.C. 52-95

# UNITED STATES TAX COURT

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## REPORTS

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September 30, 2025

UNITED STATES TAX COURT  
WASHINGTON, D.C.



## JUDGES OF THE UNITED STATES TAX COURT

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### *Judges*

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CARY DOUGLAS PUGH

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CATHY FUNG

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JAMES S. HALPERN

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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*

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REPORTS  
OF THE  
UNITED STATES TAX COURT

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ARTENA MOON AND KENNETH MOON, PETITIONERS *v.*  
COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Docket No. 21998-21.

Filed September 10, 2025.

In 2013 Ps purchased and began driving a new plug-in electric drive motor vehicle. I.R.C. § 30D provides a one-time credit of up to \$7,500 for new qualified plug-in electric drive motor vehicles placed in service by the taxpayer during the taxable year. On returns relating to 2013 through 2019, Ps claimed the maximum \$7,500 one-time I.R.C. § 30D credit. R disallowed the I.R.C. § 30D credit relating to 2019 and sent Ps a Notice of Deficiency. Ps filed a Petition contending that they were entitled to the credit relating to 2019. *Held*: Ps are not entitled to the I.R.C. § 30D credit relating to 2019 because the vehicle was placed in service in 2013.

Artena Moon and Kenneth Moon, pro sese.

*Shane R. Colegrove, Brian A. Pfeifer, Patsy A. Clarke, and Julie V. Skeen*, for respondent.

OPINION

FOLEY, *Judge*: The parties submitted this case fully stipulated pursuant to Rule 122. After concessions, the sole issue for decision is whether petitioners are entitled to the new qualified plug-in electric drive motor vehicle credit pursuant to section 30D relating to 2019 (year in issue). 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.

*Background*

In 2013 petitioners purchased and began driving a new Chevrolet Volt, a plug-in electric drive motor vehicle manufactured primarily for use on public streets, roads, and highways. From 2013 through the year in issue, petitioners claimed a \$7,500 section 30D credit relating to the Chevrolet Volt. In a Notice of Deficiency dated May 18, 2021, respondent disallowed the section 30D credit claimed on petitioners' 2019 federal income tax return, determined a deficiency of \$7,500, and proposed a section 6662(a) accuracy-related penalty.

Respondent subsequently conceded the accuracy-related penalty. Petitioners, while residing in California, timely filed their Petition disputing respondent's disallowance of the credit.

### *Discussion*

Section 30D provides a one-time credit against tax of up to \$7,500 for new qualified plug-in electric drive motor vehicles “placed in service by the taxpayer during the taxable year.” I.R.C. § 30D(a). While section 30D does not define “placed in service,” the phrase is defined in regulations relating to other sections of the Code. For example, the section 38 general business credit is allowed only for the taxable year in which the taxpayer first places section 38 property in service. *See* Treas. Reg. § 1.48-1(a). Section 38 property is placed in service the earlier of when “the period for depreciation with respect to such property begins” or the property “is placed in a condition or state of readiness and availability for a specifically assigned function.” Treas. Reg. § 1.46-3(d)(1). With respect to the section 38 general business credit, this Court has held that property is placed in service when it is in a condition to be regularly used for its specifically assigned function. *See, e.g., Consumers Power Co. v. Commissioner*, 89 T.C. 710, 724 (1987) (holding that a hydroelectric power plant was placed in service only once it had passed all required inspections and was regularly generating power); *Noell v. Commissioner*, 66 T.C. 718, 729 (1976) (holding that an airport runway was placed in service when it was fully paved and available for regular service); *Madison Newspapers, Inc. v. Commissioner*, 47 T.C. 630, 637 (1967) (holding that a printing press was placed in service when the unit was installed and regularly publishing newspapers).

Upon purchase, petitioners' vehicle was ready, available, and used consistently with its specifically assigned function. Accordingly, petitioners' Chevrolet Volt was placed in service in 2013. We note that prior to the year in issue, petitioners had claimed the maximum \$7,500 one-time section 30D credit on their 2013, 2014, 2015, 2016, 2017, and 2018 tax returns. The credit was allowable only for the taxable year petitioners' vehicle was first placed in service. Petitioners certainly were not entitled to the credit relating to 2019.

Any contentions not addressed are irrelevant, moot, or meritless.

To reflect the foregoing,

*Decision will be entered for respondent as to the deficiency and for petitioners as to the accuracy-related penalty.*

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AYLA A. SAVAGE, PETITIONER *v.* COMMISSIONER  
OF INTERNAL REVENUE, RESPONDENT

PATRICIA A. TORRES, PETITIONER *v.* COMMISSIONER  
OF INTERNAL REVENUE, RESPONDENT

Docket Nos. 21606-22, 21607-22. Filed September 11, 2025.

Ps, shareholders of three S corporations, each filed individual income tax returns for 2018 and 2019 reporting items with respect to the S corporations. Two of the S corporations are subject to I.R.C. § 280E, and therefore certain of their deductions were disallowed in determining taxable income for those years. For 2018 and 2019, Ps claimed qualified business income deductions under I.R.C. § 199A with respect to the activities of the S corporations. In computing the deductions under I.R.C. § 199A, Ps treated as “W-2 wages,” within the meaning of I.R.C. § 199A(b)(4), all of the amounts paid and reported by the S corporations without regard to whether those amounts were deductible in determining taxable income. As relevant here, R determined that, under I.R.C. § 199A(b)(4)(B) and (c), the computation of Ps’ I.R.C. § 199A deductions should take into account only wages that were deductible after the application of I.R.C. § 280E, *see* I.R.C. § 199A(c)(3)(A)(ii), and reduced Ps’ section 199A deductions accordingly. *Held*: R correctly applied I.R.C. § 199A with respect to the wages at issue.

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

JENKINS, *J.*, wrote a dissenting opinion.

*Cory L. Johnson*, for petitioners.

*Allison M. Case, Gregory Michael Hahn, and Logan M. Westerman*, for respondent.

## OPINION

TORO, *Judge*: The Tax Cuts and Jobs Act (TCJA), Pub. L. No. 115-97, 131 Stat. 2054 (2017), lowered the income tax rate applicable to corporations. See TCJA § 13001, 131 Stat. at 2096.<sup>1</sup> To provide a measure of parity for noncorporate business taxpayers (including taxpayers who are taxed on income earned by passthrough entities, such as S corporations),<sup>2</sup> the TCJA also introduced a new deduction under section 199A. See TCJA § 11011(a), 131 Stat. at 2063–70. As relevant here, for certain taxpayers, the amount of the deduction is limited by the “W–2 wages” the taxpayer (or the passthrough entity) pays, among other things. See I.R.C. § 199A(a), (b)(2). Thus, all else being equal and simplifying considerably, a taxpayer who pays more “W–2 wages” may qualify for a larger deduction than a taxpayer who pays less “W–2 wages.”

Section 199A(b)(4) defines the term “W–2 wages.” The question before us in these consolidated deficiency cases is whether that term (as Congress defined it) includes or excludes wage amounts for which a deduction is disallowed under section 280E. If such amounts are included in “W–2 wages,” petitioners, Ayla A. Savage and Patricia A. Torres, would receive larger section 199A deductions and therefore have lower tax bills. If they are excluded, the opposite would be true.

Ms. Savage and Ms. Torres maintain that wage amounts for which a deduction is disallowed under section 280E are included in the term “W–2 wages” under section 199A(b)(4). The Commissioner takes the contrary view. We conclude that a straightforward reading of the relevant statutory text supports the Commissioner, as we explain further below.<sup>3</sup>

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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. On April 4, 2023, these cases were consolidated for purposes of trial, briefing, and opinion.

<sup>2</sup> An S corporation reports items of gross income and deductions to the Internal Revenue Service and its shareholders on an information return, Form 1120–S, U.S. Income Tax Return for an S Corporation. See I.R.C. § 6037(a) and (b); Treas. Reg. § 1.1366-1(a)(1). The shareholders take these items into account on their own returns. See I.R.C. § 1366(a).

<sup>3</sup> In view of the dispute the parties have presented to us and our disposition, we express no view on any further interactions between section 199A

### *Background*

The parties submitted these cases fully stipulated under Rule 122. The facts below are based on the pleadings and the parties' Stipulations of Facts (including the Exhibits attached thereto). The parties' Stipulations of Facts with the accompanying Exhibits are incorporated herein by this reference. Ms. Savage and Ms. Torres resided in the State of Washington when they timely filed their Petitions in these cases.

Because the dispute before us is strictly legal, the background we provide here is brief. Ms. Savage and Ms. Torres co-owned three S corporations that filed Forms 1120-S for tax years 2018 and 2019. In the individual federal income tax returns Ms. Savage and Ms. Torres filed for those years, they each claimed the deduction provided under section 199A with respect to income earned by the S corporations and passed through to them.

Two of the corporations—Tru Greenthumb, Inc., and Filla-bong, Inc.—sell cannabis and cannabis-derived products and are subject to the limitations section 280E imposes.<sup>4</sup> The parties have stipulated that the third—Fillabong and Glass, Inc.—is not subject to the limitations of section 280E.<sup>5</sup>

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and section 280E.

<sup>4</sup> Section 280E provides:

No deduction or credit shall be allowed for any amount paid or incurred during the taxable year in carrying on any trade or business if such trade or business (or the activities which comprise such trade or business) consists of trafficking in controlled substances (within the meaning of schedule I and II of the Controlled Substances Act) which is prohibited by Federal law or the law of any State in which such trade or business is conducted.

<sup>5</sup> In *Patients Mutual Assistance Collective Corp. v. Commissioner*, 151 T.C. 176, 198–99 (2018), *aff'd*, 995 F.3d 671 (9th Cir. 2021), we held that a single taxpayer could have multiple trades or businesses, some of which would be subject to section 280E and some of which would not, or a single trade or business consisting of multiple activities all of which would be subject to section 280E, even if the activities are undertaken through separate entities. The record does not disclose the precise trades or businesses of the three S corporations at issue, and we have no reason to believe that the parties' stipulations are inconsistent with the Court's caselaw on the proper delineation of trades or businesses for purposes of applying section 280E. See *Estate of Saia v. Commissioner*, 61 T.C. 515, 519 (1974) (explaining that, while the parties may agree to certain facts by stipulation, the Court is not bound to accept as controlling stipulations as to conclusions of law); see also *Estate of Sanford v. Commissioner*, 308 U.S. 39, 51 (1939) (same).

The parties agree that section 280E limits the amounts of W–2 wages that Tru Greenthumb and Fillabong may deduct from their gross income on their Forms 1120–S for tax years 2018 and 2019. They have stipulated the amounts of W–2 wages Tru Greenthumb and Fillabong paid in tax years 2018 and 2019 (Total W–2 Wages) and the amounts of W–2 wages Tru Greenthumb and Fillabong may deduct from gross income on their Forms 1120–S for tax years 2018 and 2019 after the application of section 280E (Deductible W–2 Wages). The relevant amounts are shown in the tables below.

	<i>Tax Year 2018</i>	
	<i>Total W–2 Wages</i>	<i>Deductible W–2 Wages</i>
Tru Greenthumb	\$7,740	\$3,991
Fillabong	605,955	148,782
Fillabong and Glass	-0-	-0-
<b>Total</b>	<b>\$613,695</b>	<b>\$152,773</b>

	<i>Tax Year 2019</i>	
	<i>Total W–2 Wages</i>	<i>Deductible W–2 Wages</i>
Tru Greenthumb	\$168,134	\$40,658
Fillabong	641,886	146,828
Fillabong and Glass	59,860	59,860
<b>Total</b>	<b>\$869,880</b>	<b>\$247,346</b>

The only remaining disagreement between the parties is whether (a) Total W–2 Wages or (b) Deductible W–2 Wages should be used for computing the section 199A deductions under section 199A(b)(2)(B)(i) for tax years 2018 and 2019 for Ms. Savage and Ms. Torres.<sup>6</sup>

#### *Discussion*

“As with any question of statutory interpretation, our analysis begins with the plain language of the statute.” *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009) (citing

<sup>6</sup> The parties have resolved by agreement all other issues, including issues concerning tax year 2017.

*Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004)). Resolution of the dispute before us requires close reading of rather technical Code provisions that contain nested definitions. As the Supreme Court has instructed, “[w]hen a statute includes an explicit definition, we must follow that definition, even if it varies from a term’s ordinary meaning.” *Tanzin v. Tanvir*, 592 U.S. 43, 47 (2020) (quoting *Digital Realty Tr., Inc. v. Somers*, 583 U.S. 149, 160 (2018)); see also *Dep’t of Agric. Rural Dev. Rural Hous. Serv. v. Kirtz*, 144 S. Ct. 457, 472 (2024) (“When Congress takes the trouble to define the terms it uses, a court must respect its definitions as ‘virtually conclusive.’” (quoting *Sturgeon v. Frost*, 139 S. Ct. 1066, 1086 (2019))). By contrast, when the statute does not define a term, “we ask what that term’s ‘ordinary, contemporary, common meaning’ was when Congress enacted” the relevant provision. *Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2362 (2019) (quoting *Perrin v. United States*, 444 U.S. 37, 42 (1979)); *Dynamo Holdings Ltd. P’ship v. Commissioner*, 150 T.C. 224, 234 (2018) (reviewed).

### I. Definition of “W–2 Wages”

We have already noted that, for some taxpayers, the amount of the section 199A deduction is limited by the “W–2 wages” they (or, as is the case here, their passthrough entities) paid. See I.R.C. § 199A(a), (b)(2). Thus, the concept of “W–2 wages” is critical to operation of the statute.

Section 199A(b)(4) defines the term as follows:

(4) Wages, etc.—

(A) In general.—The term “W–2 wages” means, with respect to any person for any taxable year of such person, the amounts described in paragraphs (3) and (8) of section 6051(a) paid by such person with respect to employment of employees by such person during the calendar year ending during such taxable year.

(B) Limitation to wages attributable to qualified business income.—Such term shall not include any amount which is not properly allocable to qualified business income for purposes of subsection (c)(1).

(C) Return requirement.—Such term shall not include any amount which is not properly included in a return filed with the Social Security Administration on or before the 60th day after the due date (including extensions) for such return.

A few observations jump out from the text. First, the definition takes the form of a general rule followed by exceptions.

Second, both the general rule and one of the exceptions turn on other statutory provisions.

### A. *The General Rule*

Pausing briefly on the general rule, we note that it directs the reader to section 6051(a), which sets out rules concerning the preparation of Forms W-2, Wage and Tax Statement. Paragraph (3) of section 6051(a) addresses the wages an employer pays an employee, while paragraph (8) generally addresses amounts contributed to tax-advantaged retirement accounts and deferred compensation. Piecing these references together, to determine what the term “W-2 wages” means for purposes of section 199A, one must start with the Form W-2 statements an employer files. And, more specifically, with certain of the amounts reflected in those statements.

But that is only the beginning of the analysis. One must also consider the limitations Congress set out. *See, e.g., Burgess v. United States*, 553 U.S. 124, 130 (2008) (“As a rule, [a] definition which declares what a term ‘means’ . . . excludes any meaning that is not stated.” (quoting *Colautti v. Franklin*, 439 U.S. 379, 392 n.10 (1979))); Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 232 (2012) (“Legal drafters have the power not only to define their terms but also to limit the implications of their terms . . .”).

### B. *The Relevant Exception*

Section 199A(b)(4)(B) expressly provides for one such limitation. Specifically, it says that “[s]uch term”—i.e., the term “W-2 wages”—“shall not include any amount which is not properly allocable to qualified business income for purposes of subsection (c)(1).”<sup>7</sup>

Put another way, although certain amounts may have been reported by an employer to an employee in a Form W-2 under section 6051(a), those amounts do not constitute “W-2 wages” for purposes of section 199A if they are not properly allocable to qualified business income for purposes of section 199A(c)(1). Or, to state the same proposition affirmatively, wages must be properly allocable to qualified business income for purposes of

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<sup>7</sup> The parties have no dispute with respect to section 199A(b)(4)(C), so we need not discuss that provision further.

section 199A(c)(1) in order to be considered “W–2 wages” for purposes of section 199A.

### 1. “*Properly Allocable*”

The term “properly allocable” is not defined in the statute. Accordingly, we must discern its ordinary meaning when section 199A was adopted. *See, e.g., Food Mktg. Inst.*, 139 S. Ct. at 2362; *Dynamo Holdings Ltd. P’ship*, 150 T.C. at 234.

“Properly” is the adverbial form of the adjective “proper,” defined as “[c]haracterized by appropriateness or suitability; fitting” and “[c]alled for by rules or conventions; correct.” *Proper*, *The American Heritage Dictionary* (5th ed. 2018); *Proper*, *The American Heritage Dictionary* (5th ed. 2011) (same).

The word “allocable” means “capable of being allocated.” *Allocable*, *The American Heritage Dictionary* (5th ed. 2018); *Allocable*, *The American Heritage Dictionary* (5th ed. 2011) (same); *Allocable*, *Black’s Law Dictionary* (10th ed. 2014) (“Capable of being allocated; assignable.”). And the word “allocate” in turn means “[t]o set apart for a special purpose; designate.” *Allocate*, *The American Heritage Dictionary* (5th ed. 2018); *Allocate*, *The American Heritage Dictionary* (5th ed. 2011) (same); *Allocation*, *Black’s Law Dictionary* (10th ed. 2014) (“The amount or share of something that has been set aside or designated for a particular purpose.”).

Putting these definitions together, we conclude that the ordinary meaning of the phrase “properly allocable” refers to something that may be designated to go with something else and fits appropriately or correctly (permissibly, one might say) with it. That an amount is “capable of being allocated” to a category in the abstract is not enough. The item must go appropriately or correctly with the category. Any other interpretation would leave the adverb “properly” with no work to do.

### 2. “*Qualified Business Income*”

For the meaning of “qualified business income,” we turn to section 199A(c)(1), as instructed. *See, e.g., Tanzin*, 592 U.S. at 47. Section 199A(c) defines the concept of “qualified business income” for all purposes of section 199A. *See* I.R.C. § 199A(c) (noting in the lead text that it applies “[f]or purposes of this section”); *see also Digital Realty Tr., Inc.*, 583

U.S. at 160–61 (“Leaving no doubt as to the definition’s reach, the statute instructs that the ‘definitio[n] shall apply’ ‘[i]n this section,’ that is, throughout [the section at issue].” (quoting 15 U.S.C. § 78u-6)). Section 199A(c)(1)—the specific paragraph referenced in section 199A(b)(4)(B)—provides:

In general.—The term “qualified business income” means, for any taxable year, the net amount of qualified items of income, gain, deduction, and loss with respect to any qualified trade or business of the taxpayer. Such term shall not include any qualified REIT dividends or qualified publicly traded partnership income.

Thus, according to section 199A(c)(1), “qualified business income” consists of the net amount of certain items—which the statute terms “qualified items of income, gain, deduction, and loss.”

That latter phrase is further defined in section 199A(c)(3). As relevant to our discussion, section 199A(c)(3) provides:

Qualified items of income, gain, deduction, and loss.—For purposes of this subsection [i.e., for purposes of section 199A(c)]—

(A) In general.—The term “qualified items of income, gain, deduction, and loss” means items of income, gain, deduction, and loss to the extent such items are—

- (i) effectively connected with the conduct of a trade or business within the United States . . . , and
- (ii) included or allowed in determining taxable income for the taxable year.

Working backwards from the statutory definitions makes it easy to understand how the provision works. Wages are included in the term “qualified items of income, gain, deduction, and loss” only “to the extent” they are “allowed in determining taxable income for the taxable year.” To state the converse, if certain wage amounts are not “allowed in determining taxable income for the taxable year,” those amounts are not part of the term “qualified items of income, gain, deduction, and loss” for purposes of section 199A(c). For convenience, we will refer to these wage amounts as nondeductible wages.

Because nondeductible wages are not part of the defined term “qualified items of income, gain, deduction, and loss,” they cannot be included in the defined term “qualified business income” for purposes of section 199A(c)(1).

## II. *Application to Wages Disqualified Under Section 280E*

### A. *Statutory Analysis*

As we have said, section 199A(b)(4)(B) requires that wages be “properly allocable” to “qualified business income for purposes of [section 199A(c)(1)]” in order to be considered “W–2 wages” for purposes of section 199A. Under ordinary usage, for wages to be properly allocable to qualified business income, they must be capable of being designated to go with (or set apart for) qualified business income and must fit appropriately, suitably, or correctly with qualified business income. *See supra* Discussion Part I.B.1 (setting out the relevant dictionary definitions).

But nondeductible wages cannot be included in “qualified business income” for purposes of section 199A(c)(1) because the statute expressly excludes them from the scope of that concept. In view of that statutory command, such wages are not capable of being designated to go correctly with (or being set apart for) qualified business income. They do not “fit” “correctly” under that statutory construct and, therefore, are not properly allocable to it. And if nondeductible wages are not properly allocable to qualified business income, they cannot be “W–2 wages” as defined in section 199A(b)(4)(B).

The parties here agree that portions of the wages Tru Greenthumb and Fillabong paid are not “allowed” as deductions “in determining the taxable income” of those corporations. Put differently, the parties agree that the wages whose treatment for purposes of section 199A is in dispute are nondeductible wages.<sup>8</sup> Under our analysis above, those amounts cannot constitute “qualified items of income, gain, deduction, and loss” under section 199A(c)(3) or be part of “qualified business income” for purposes of section 199A(c)(1). Thus, they are not “W–2 wages” within the meaning of section 199A(b)(4)(B).

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<sup>8</sup> For 2018, nondeductible wages were \$460,922—i.e., the difference between Total W–2 Wages (\$613,695) for Tru Greenthumb and Fillabong and Deductible W–2 Wages (\$152,773) for those two entities. *See supra* p. 57. For 2019, nondeductible wages were \$622,534—again, the difference between Total W–2 Wages (\$810,020) for Tru Greenthumb and Fillabong and Deductible W–2 Wages (\$187,486) for those two entities. *See supra* p. 57.

In short, the Commissioner's position is consistent with the statutory text,<sup>9</sup> and petitioners' position is not.

### B. *Petitioners' Arguments*

Ms. Savage and Ms. Torres protest that the Commissioner is ignoring the plain text of section 199A(b)(4)(A). According to them, W-2 wages include “*all* remuneration included on the W-2s issued by the business.” Pet’rs’ Op. Br. 6. They decry the Commissioner’s “attempt to add conditions and additional language not in the statute to limit W-2 wages to those wages allowed to be deducted by the business after application of § 280E” and ask us to reject it “because it is manifestly contrary to the clear statutory language.” Pet’rs’ Op. Br. 6-7.

But as our analysis above shows, Ms. Savage’s and Ms. Torres’s view rests on a selective reading of the statute. Their proposed reading focuses on the general rule of section 199A(b)(4)(A), but wholly ignores the express limitation set out in section 199A(b)(4)(B) and the ordinary meaning of the phrase “properly allocable.” That is not an acceptable method of statutory analysis. *See United Therapeutics Corp. v. Commissioner*, 160 T.C. 491, 513 (2023) (explaining that a cardinal principle of interpretation requires that we give effect, if possible, to every clause and word of the statute and collecting authorities), *aff’d*, 105 F.4th 183 (4th Cir. 2024); *see also Cyan, Inc. v. Beaver Cnty. Emps. Ret. Fund*, 583 U.S. 416, 428 (2018) (rejecting an attempt “to cherry pick from the material covered by the statutory cross-reference”).

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<sup>9</sup>The Commissioner’s position is also consistent with the regulations promulgated under section 199A. *See, e.g.*, Treas. Reg. § 1.199A-2(b)(4) (“W-2 wages are properly allocable to [qualified business income] if the associated wage expense is taken into account in computing [qualified business income] under § 1.199A-3.”); Prop. Treas. Reg. § 1.199A-2(b)(4), 83 Fed. Reg. 40,884, 40,918 (Aug. 16, 2018) (same). On August 16, 2018, the Department of the Treasury and the Internal Revenue Service (collectively, Treasury) published a notice of proposed rulemaking with proposed regulations under section 199A. *See* Qualified Business Income Deduction, 83 Fed. Reg. 40,884. On February 8, 2019, Treasury published a Treasury Decision with final regulations under section 199A. *See* T.D. 9847, 2019-9 I.R.B. 670, 84 Fed. Reg. 2952 (Feb. 8, 2019). The final regulations apply only to taxable years ending after February 8, 2019, although, for taxable years ending in calendar year 2018, taxpayers may rely on either the final regulations in their entirety or the proposed regulations in their entirety. *Id.*

Ms. Savage’s and Ms. Torres’s claim that the Commissioner is rewriting the statute and adding to it something that is not there fails for similar reasons. As we have explained, the Commissioner’s interpretation of section 199A tracks the relevant statutory provisions and gives meaning to each of them. Section 199A(c) expressly tells us how to treat amounts that are not “allowed in determining taxable income for the taxable year.” I.R.C. § 199A(c)(3)(A)(ii). Specifically, we must exclude them from qualified business income,<sup>10</sup> and they cannot be “properly allocable” to such income. Therefore, nondeductible wages likewise cannot be “W–2 wages” as the statute defines that term. The Commissioner does not “add to the statute something which is not there,” Pet’rs’ Op. Br. 13 (cleaned up), when he insists that the statutory provisions be followed.

Furthermore, the text of section 199A(b)(4)(B) focuses the inquiry on whether an amount is “properly allocable” to “qualified business income,” a net amount. The text does not refer to “gross receipts” or specific items of income or gain listed in section 199A(c)(3). Congress could, of course, have used those words if it had wished to. It certainly knew how to do so. *See* I.R.C. § 199A(g)(1)(B) (excluding from the definition of “W–2 wages” for purposes of the deduction for income attributable to domestic production activities of specified agricultural or horticultural cooperatives “any amount which is not properly allocable to domestic production gross receipts for purposes of [section 199A(g)(3)(A)]”). The fact that it did not must be respected. *See Digital Realty Tr., Inc.*, 583 U.S. at 161 (“[W]hen Congress includes particular language in one section of a statute but omits it in another[,] . . . this Court presumes that Congress intended a difference in meaning.” (quoting *Loughrin v. United States*, 573 U.S. 351, 358 (2014))); *see also Knight v. Commissioner*, 552 U.S. 181, 188 (2008) (“The fact

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<sup>10</sup> We note that Ms. Savage and Ms. Torres do not object to using wages limited by section 280E (that is, Deductible W–2 Wages) to calculate qualified business income for Tru Greenthumb and Fillabong. That is understandable, as using the lower wage number in this particular calculation produces greater qualified business income, and the potential for higher section 199A deductions for Ms. Savage and Ms. Torres. But their interpretation of the statute produces an inconsistency: They ask us to use Deductible W–2 Wages for one aspect of the section 199A computation and Total W–2 Wages for another. The Commissioner’s interpretation, by contrast, produces no such inconsistency.

that [Congress] did not adopt [a] readily available and apparent alternative strongly supports rejecting [a] reading [that relies on the rejected alternative text].”); *Thomas v. Commissioner*, 160 T.C. 371, 382–83 (2023) (reviewed) (same).<sup>11</sup>

Congress also could have referred us not to section 199A(c)(1), but to section 199A(c)(3)(A)(i), or even to the term “qualified item of income [or] gain” or some other term, to achieve the result Ms. Savage and Ms. Torres seek. As the Supreme Court has noted, “Congress often drafts statutes with hierarchical schemes—section, subsection, paragraph, and on down the line.” *NLRB v. SW General, Inc.*, 580 U.S. 288, 300 (2017). And “[w]hen Congress want[s] to refer only to a particular subsection or paragraph, it sa[ys] so.” *Ibid.* It said no such thing” here. *Cyan, Inc.*, 583 U.S. at 428.

In addition, that section 199A may be patterned after the now-repealed section 199 gives us no license to ignore the actual words Congress used in section 199A(b)(4)(B) and (c) in favor of words that were used in former section 199. “The starting point in discerning congressional intent is the existing statutory text . . . and not the predecessor statutes.” *Lamie*, 540 U.S. at 534; *accord United Therapeutics*, 160 T.C. at 507–10.

Finally, Ms. Savage and Ms. Torres press certain policy arguments in favor of their view. We do not find them well founded, but in any event the arguments are misdirected. We have no warrant to rewrite the statutory text Congress wrote. *See Varian Med. Sys., Inc. & Subs. v. Commissioner*, 163 T.C. 76, 102 (2024) (reviewed). “Achieving a better policy outcome . . . is a task for Congress, not the courts.” *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 13–14 (2000); *see also Crowe v. Wormuth*, 74 F.4th 1011, 1032 (9th Cir. 2023) (“[O]ur role is not to devise a ‘better’ administrative scheme than the one Congress enacted.”); *Tex. Brine Co. v. Am. Arb. Ass’n*, 955 F.3d 482, 486 (5th Cir. 2020) (“We are not the final editors of statutes, modifying language when we perceive some [purported] oversight.”).

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<sup>11</sup> Nor does the use of the phrase “properly allocable” in other parts of the Code provide petitioners any refuge. Whatever form “proper allocation” might take in other contexts, in view of the specific text and statutory structure here, an amount that expressly may not be a part of “qualified business income” cannot be “properly allocable” thereto, as we have explained above.

### III. *Conclusion*

To sum up, the Commissioner offers the best reading of the statute. Because the parties have stipulated what the deficiencies would be under their respective positions, we need not order computations under Rule 155, but may enter decisions in accordance with their stipulated computations.

On the basis of those computations, the deficiencies we find for 2018 and 2019 are as follows:

<i>Year</i>	<i>Deficiency Amounts</i>	
	<i>Ms. Savage</i>	<i>Ms. Torres</i>
2018	\$313,900	\$292,759
2019	187,325	186,107

We have considered all of the parties' arguments and, to the extent not discussed above, conclude they are irrelevant, moot, or without merit.

To reflect the foregoing,

*Appropriate decisions will be entered.*

Reviewed by the Court.

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

JENKINS, *J.*, dissents.

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JENKINS, *J.*, dissenting: Respondent concedes that petitioners can deduct some of the income with respect to their cannabis-related businesses in order to reduce their tax on that income. But, respondent argues, the deduction is indirectly zeroed out by a cap intended to limit the benefit to businesses that pay wages to employees. It does not matter that the businesses *did* pay wages to employees, respondent says, because the fact that petitioners are not allowed to deduct the wages means the wages are not properly allocable to the

income from the businesses. The opinion of the Court agrees. I respectfully disagree.

### I. *Purposes of Section 199A*

As the opinion of the Court acknowledges, *see op. Ct. p. 55*, Congress created the section 199A deduction to reduce the tax rate that applies to certain income from qualified trades or businesses. Consistent with its purpose, section 199A permits a qualified trade or business to deduct an amount more or less equal to 20% of the U.S. taxable income from such trade or business, subject to a cap. *See* § 199A(a)(2)(A), (b)(2)(A), (c)(1). In these cases, the cap is an amount equal to 50% of “W–2 wages,” *see* § 199A(b)(2)(B)(i), consistent with the fact that “Congress intended that [the statute] create jobs in the United States,” *Gibson & Assocs. Inc. v. Commissioner*, 136 T.C. 195, 223 (2011) (addressing the same limitation in former section 199).

Congress put some effort into drawing the line between qualified trades or businesses eligible for the deduction and those trades or businesses that are not eligible. However, it did not include drug trafficking businesses in the detailed list of businesses that are not eligible for the deduction. *See* § 199A(d)(1) and (2). And Congress did not amend section 280E to disallow the section 199A deduction, leaving respondent conceding that it is available with respect to petitioners’ cannabis-related businesses.

### II. *Computation of Section 199A Deduction*

In order to determine the amount of a taxpayer’s section 199A deduction, the taxpayer’s businesses must first be considered one by one, both to separate the qualified trades or businesses from those not eligible for the deduction, *see* § 199A(d)(1), and to separate the qualified trades or businesses from each other, *see* § 199A(b)(1)(A), (2). Then, qualified items of income, deduction, gain, or loss with respect to each qualified trade or business must be identified. *See* § 199A(c)(1), (3). That requires determining to which business each item of gross income is “properly allocable” and to which items of gross income each item of deduction is “properly allocable.” *See* § 199A(c)(3)(B)(iii), (vii); Treas. Reg.

§ 1.199A-3(b)(5).<sup>1</sup> Given that qualified items of income and deduction must both be properly allocable to a qualified trade or business, *see* § 199A(c)(1), and meet the other statutory criteria, such as being “included or allowed in determining taxable income,” § 199A(c)(3)(A)(ii), only after those allocations are done can qualified items of income and deduction be identified. *Cf.* Treas. Reg. § 1.199A-3(b)(2)(ii)(H).<sup>2</sup>

The final step of the multistep process set forth in section 199A(c) is to determine net qualified business income for a particular qualified trade or business by netting all of the qualified items with respect to such business pursuant to section 199A(c)(1). However, the preliminary allocation steps

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<sup>1</sup> Although the regulations do not explicitly address the specific issue in these cases, they illustrate the understanding of the Department of the Treasury (Treasury) as to how the section 199A statutory scheme operates. The opinion of the Court highlights Treasury Regulation § 1.199A-2(b)(4), *see op. Ct. note 9*, but includes no discussion of the rules in Treasury Regulation § 1.199A-3 to which Treasury Regulation § 1.199A-2(b)(4) refers and which are contrary to respondent’s position in these cases.

The allocation of “items of QBI”—meaning “items of income, gain, deduction, and loss”—prescribed by Treasury Regulation § 1.199A-3(b)(5) is consistent with the allocation that the Court has recognized is required to determine which of a taxpayer’s deductions are subject to section 280E. *See Californians Helping to Alleviate Med. Probs., Inc. v. Commissioner*, 128 T.C. 173, 185–86 (2007) (discussing the allocation of expenses between a taxpayer’s business subject to section 280E and its separate legal business). And it is consistent with allocations of expenses generally required under the Code in being to gross income in order to determine net income. *See, e.g.*, §§ 161, 863(a); Treas. Reg. § 1.861-8(a) and (b).

<sup>2</sup> Treasury Regulation § 1.199A-3(b)(2)(ii)(H) underscores that the allocation of compensation deductions is to a trade or business and gross income therefrom, and not to qualified business income as defined in section 199A(c)(1). Furthermore, in prescribing when compensation “will reduce QBI” (emphasis added), and not just be taken into account in computing qualified business income or be allocable to qualified business income, it contradicts the understanding of the opinion of the Court of those concepts as being equivalent. *Compare* Treas. Reg. § 1.199A-3(b)(2)(ii)(H), *with* Treas. Reg. § 1.199A-3(b)(4) (“Expenses for all wages paid . . . must be taken into account in computing QBI.”), *and* Treas. Reg. § 1.199A-2(b)(4) (“W-2 wages are properly allocable to QBI if the associated wage expense is taken into account in computing QBI under § 1.199A-3.”). And finally, by addressing the points separately, Treasury Regulation § 1.199A-3(b)(2)(ii)(H) also makes clear that the consideration of whether compensation is deductible for federal income tax purposes is separate and apart from the consideration of whether the compensation is properly allocable to a trade or business and thus the gross income and qualified business income therefrom.

have already served to identify wage expenses that are properly allocable to income from a qualified business. And that income can be described as qualified business income. Accordingly, if a taxpayer has gross income from a qualified trade or business eligible for a section 199A deduction, wage expenses properly allocable to that gross qualified business income should constitute “W–2 wages” within the meaning of section 199A(b)(4).

### III. Overall Statutory Framework

The opinion of the Court focuses on the final step in section 199A(c) as necessarily prescribing for purposes of section 199A(b)(4)(B) what amounts are “properly allocable to qualified business income for purposes of subsection (c)(1).” More specifically, the opinion of the Court concludes that because wage expenses that are not allowed in determining taxable income are not qualified items of deduction, and therefore do not reduce qualified business income, they are also not properly allocable to qualified business income. But if Congress had intended that, it could have said so by using the same phrase—“allowed in determining”—that it used in defining the term “qualified items of deduction” or by using that term. Congress did not do that. And, as the opinion of the Court puts it, citing *Digital Realty Trust, Inc. v. Somers*, 583 U.S. 149 (2018), and *Knight v. Commissioner*, 552 U.S. 181 (2008): “The fact that it did not must be respected.” *See op. Ct.* p. 64. However, such caselaw even more strongly supports the understanding that Congress did not intend “properly allocable to” in section 199A(b)(4)(B) to mean “allowed in determining,” given that it “did not adopt this readily available and apparent alternative,” *Knight v. Commissioner*, 552 U.S. at 188, used in section 199A(c)(3)(A)(ii). Congress, therefore, presumably “intended a difference in meaning.” *Digital Realty Tr.*, 583 U.S. at 161 (quoting *Loughrin v. United States*, 573 U.S. 351, 358 (2014)); *cf. Russello v. United States*, 464 U.S. 16, 23 (1983) (“We refrain from concluding here that the differing language in the two subsections has the same meaning in each.”).

Contrary to the assertion of the opinion of the Court, the inquiry into what different meaning Congress might have intended must consider the entirety of section 199A. *See Davis*

*v. Mich. Dep't of Treasury*, 489 U.S. 803, 809 (1989) (“It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.”); *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (“In ascertaining the plain meaning of the statute, the court must look to the particular statutory language at issue, as well as the language and design of the statute as a whole.”). Starting with the definition of “W–2 wages” in section 199A(b)(4), and its cross-reference to section 199A(c)(1), it must be noted that it is inconsistent with the design of section 199A to allocate wage expenses to qualified business income as computed in section 199A(c)(1) “for purposes of” the computation of qualified business income in section 199A(c)(1). In fact, it would be circular to allocate to an amount “for purposes of” computing that amount. By contrast, the understanding that the allocation required for purposes of determining “W–2 wages” is to gross income is not only consistent with the operation of section 199A(c) and the regulations. It is also supported by former section 199(b)(2),<sup>3</sup> which is duplicated by section 199A(b)(4) nearly verbatim. And it is supported by current section 199A(g)(1)(B)(ii), which the opinion of the Court would interpret to apply a completely different meaning of “properly allocable” despite being enacted by the same Congress to appear in the same Code section. *See Consolidated Appropriations Act, 2018*, Pub. L. No. 115-141, div. T, § 101(a)(1), 132 Stat. 348, 1151.

#### IV. *Interaction of Sections 199A and 280E*

Petitioners’ position is also supported by the rate reduction and job creation purposes of section 199A. Respondent argues, and the opinion of the Court apparently agrees, *see op. Ct. note 10*, that petitioners inappropriately seek to maximize the amount of their “W–2 wages” in order to maximize the amount of the deduction to which they are entitled. I appreciate the concern that petitioners are deducting the lower amount of wage expenses allowed after application of section 280E, thereby increasing their qualified business income

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<sup>3</sup>Treasury repeatedly explained that the section 199A regulations were based on the regulations implementing former section 199(b)(2). *See Qualified Business Income Deduction*, 83 Fed. Reg. 40,884, 40,887 (Aug. 16, 2018); T.D. 9847, 2019-9 I.R.B. 670, 705, 84 Fed. Reg. 2952, 2983 (Feb. 8, 2019).

under section 199A(c)(1), while seeking to take into account a higher amount of wage expenses unlimited by section 280E for purposes of the cap based on “W–2 wages.” However, because the higher amount of “W–2 wages” is used only for purposes of the cap based on “W–2 wages,” it does not allow the amount of the deduction to exceed 20% of qualified business income and taxable income (as determined for purposes of section 199A), which is higher simply by virtue of the application of section 280E. Accordingly, the drug-trafficking deterrence objective of section 280E is still furthered by the resulting overall tax burden relative to gross income, as compared to a business that is not subject to section 280E.<sup>4</sup> And that is accomplished without a distorted reading of section 199A. Allowing a qualified business with meaningful wage expenses a deduction of up to 20% of taxable income, however taxable income is determined, is consistent with the goals of section 199A. Accordingly, I am not swayed by respondent’s equitable, policy-based argument.

#### *V. Conclusion*

For the reasons discussed herein, I would hold that “W–2 wages,” as defined in section 199A(b)(4), are determined without regard to the application of section 280E. Such a conclusion is also supported by the understanding that “in

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<sup>4</sup> Suppose, for example, that a taxpayer had \$80,000 of qualified items of income with respect to a qualified trade or business, the only expenses with respect to which were \$40,000 of wage expenses described in section 199A(b)(4)(A). Suppose further that those wage expenses, despite being properly allocable to the qualified trade or business, were not deductible in computing taxable income on account of the application of section 280E. The taxpayer’s qualified business income would be \$80,000, such that the uncapped amount of the deduction would be \$16,000 (20% of \$80,000), instead of the \$8,000 (20% of \$40,000 (\$80,000 – \$40,000)) that it would be if the wage expenses were deductible in computing qualified business income. Nevertheless, the cap based on “W–2 wages” would be \$20,000 (50% of \$40,000), instead of the zero that it would be if “W–2 wages” were determined after application of section 280E. And, if there were no difference between the taxpayer’s qualified business income and taxable income, the taxpayer could therefore potentially be entitled to a deduction of \$16,000 instead of \$8,000. However, if a flat 30% rate would otherwise apply, the taxpayer would pay \$19,200 (30% of \$64,000 (\$80,000 – \$16,000)) of tax, or 24% of gross income, instead of the \$9,600 (30% of \$32,000 (\$40,000 – \$8,000)), or 12% of gross income, that would obtain if the qualified trade or business were not subject to section 280E.

statutes levying taxes . . . [i]f the words are doubtful, the doubt must be resolved against the government and in favor of the taxpayer.” *United States v. Merriam*, 263 U.S. 179, 187–88 (1923).<sup>5</sup> Accordingly, I respectfully dissent.

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BLOMQUIST HOLDINGS, LLC, CRESTLAWN INVESTORS, LLC,  
TAX MATTERS PARTNER, PETITIONER *v.* COMMISSIONER  
OF INTERNAL REVENUE, RESPONDENT

Docket No. 8015-21.

Filed September 17, 2025.

A partnership subject to the audit and litigation procedures of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub. L. No. 97-248, 96 Stat. 324, donated a conservation easement and claimed a charitable contribution deduction under I.R.C. § 170. P, the tax matters partner, timely petitioned this Court challenging the IRS’s Notice of Final Partnership Administrative Adjustment. P and R subsequently entered into a settlement agreement under Tax Ct. R. Prac. & P. 248(b). R, consistent with Tax Ct. R. Prac. & P. 248(b), filed a Motion for Entry of Decision along with a Proposed Decision. Thirty-nine Nonparticipating Partners of P (NPs) each filed and subsequently amended a Motion for Leave to File Notice of Election to Participate pursuant to Tax Ct. R. Prac. & P. 248(b)(4), seeking to avoid the settlement and proceed with the Tax Court case. NPs contend that they have an absolute right to participate in this case pursuant to I.R.C. § 6226(c)(2) and, even if not, they have made the requisite substantial showing as to why the Court should permit their participation at this late stage of the litigation. *Held*: Nonparticipating partners’ rights to participate in a TEFRA proceeding under I.R.C. § 6226(c)(2) are not absolute but are subject to the requirements of the Tax Court Rules of Practice and Procedure. *Held, further*, nonparticipating partners that request leave to file an election to participate pursuant to Tax Ct. R. Prac. & P. 248(b)(4) must make a substantial showing as to why they should be permitted to participate. *Held*,

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<sup>5</sup> Section 199A provides a deduction, such that it could be argued that “countervailing tradition suggests that the ambiguity should be resolved in the government’s favor.” *United Dominion Indus., Inc. v. United States*, 532 U.S. 822, 839 n.1 (2001) (Stevens, J., dissenting). However, as discussed, it does so as a mechanism to reduce tax rates, suggesting that its function should be considered together with the underlying rules fixing tax at a particular rate, which undeniably levy taxes.

further, NPs have not made a substantial showing as to why they should be permitted to participate in this case pursuant to Tax Ct. R. Prac. & P. 248(b)(4).

*Logan C. Abernathy, Emily C. Ellis, Sarah E. Green, Sidney W. Jackson IV, Olla F. Jaraysi, Michelle A. Levin, and Gregory P. Rhodes*, for petitioner.

*Christopher D. Bradley, Edwin B. Cleverdon, and Russell Scott Shieldes*, for respondent.

#### OPINION

PARIS, *Judge*: This case involves a charitable contribution deduction that Blomquist Holdings, LLC (Blomquist), claimed for a 2017 conservation easement donation pursuant to section 170.<sup>1</sup> The Internal Revenue Service (IRS) issued a Notice of Final Partnership Administrative Adjustment (FPAA) disallowing in large part the charitable contribution deduction and other deductions. The FPAA also sets forth that the IRS determined that a 40% gross valuation misstatement penalty pursuant to section 6662(h) and various 20% penalties applied.

Currently before the Court are 39 First Amended Motions for Leave to File Notice of Election to Participate (Amended Motions), which amended 39 Motions for Leave (Motions), filed by 39 individual minority interest partners (Objecting Nonparticipating Partners) of Crestlawn Investors, LLC (Crestlawn or petitioner). The Court will deny the Amended Motions because the Objecting Nonparticipating Partners have not made a substantial showing as to why they should be permitted to participate at this late stage of the litigation.

#### *Background*

The following facts are derived from the pleadings, the Motion papers, and the Exhibits and Declarations attached thereto. These facts are stated solely for the purpose of ruling on the Amended Motions before the Court and are not findings of fact in this case. *See Sundstrand Corp. v. Commissioner*, 98 T.C. 518, 520 (1992), *aff'd*, 17 F.3d 965 (7th Cir. 1994).

Blomquist is a Georgia limited liability company (LLC) organized in January 2015. It is treated as a TEFRA partnership

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<sup>1</sup> Unless otherwise indicated, statutory references are to the Internal Revenue Code, Title 26 U.S.C., in effect at all relevant times, and Rule references are to the Tax Court Rules of Practice and Procedure.

for federal income tax purposes.<sup>2</sup> Blomquist's principal place of business was in Georgia when the Petition in this case was filed.<sup>3</sup> Crestlawn is a Georgia LLC organized in December 2016 and Blomquist's tax matters partner (TMP).

Blomquist timely filed Form 1065, U.S. Return of Partnership Income, for the taxable year ending December 31, 2017. On its Form 1065 it claimed a \$53,862,117 charitable contribution deduction related to the donation of a conservation easement encumbering 16.572 acres of property in Fulton County, Georgia, and \$1,415,610 in other deductions. Blomquist claims that the pre-easement highest and best use of the 16.572-acre property was a cemetery. Respondent disallowed \$53,830,000 of the deduction related to the conservation easement and \$1,405,000 of other deductions. On February 22, 2021, respondent issued the FPAA to Crestlawn in its capacity as Blomquist's TMP. As set forth in the FPAA, respondent also determined a 40% gross valuation misstatement penalty pursuant to section 6662(h) for the conservation easement deduction, and a 20% accuracy-related penalty for an underpayment due to negligence or a substantial understatement of income tax under section 6662(a), (b)(1) and (2), (c), and (d) for the other deductions. Respondent also asserted various other 20% penalties in the alternative. The Objecting Nonparticipating Partners have not asserted that they did not receive a copy of the FPAA from Crestlawn's TMP or that they were otherwise unaware that the IRS issued Blomquist an FPAA for its taxable year 2017.

On May 20, 2021, in response to the FPAA, Crestlawn timely filed a Petition for Readjustment of Partnership Items Under Code Section 6226. None of the Objecting Nonparticipating Partners filed a notice of election to participate pursuant to section 6226(c) and Rule 245(b). Nor did any of them request leave to file a notice of election to participate out of time pursuant to section 6226(c) and Rule 245(c). The Objecting

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<sup>2</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 Blomquist.

<sup>3</sup> Absent stipulation to the contrary, this case is appealable to the U.S. Court of Appeals for the Eleventh Circuit. See § 7482(b)(1)(E). Thus, the Court will follow its precedent. See *Golsen v. Commissioner*, 54 T.C. 742, 756–57 (1970), *aff'd*, 445 F.2d 985 (10th Cir. 1971).

Nonparticipating Partners have not asserted that they were not aware that Crestlawn timely filed a Petition in this Court.

In a letter to petitioner’s counsel dated January 17, 2024, respondent offered petitioner—the only participating partner<sup>4</sup>—a settlement proposal that would resolve this case. Respondent proposed (1) to disallow \$53,830,000 of the charitable contribution deduction Blomquist claimed for its conservation easement donation, (2) to disallow \$1,405,000 that Blomquist claimed as an “other deduction,” (3) to allow an “other deduction” of \$11,657,800, (4) to impose a section 6662(h) accuracy-related penalty of only 10% and concede the remaining penalties, and (5) to refrain from imposing the 2% of adjusted gross income floor under section 67 on the allowed “other deduction.” On behalf of Blomquist, Crestlawn agreed with respondent’s proposed settlement of this case by letter dated April 19, 2024.

On June 20, 2024, pursuant to Rule 248(b), respondent filed a Motion for Entry of Decision and attached a Proposed Decision reflecting the terms of the agreed settlement. In accordance with Rule 248(b)(1), the Motion for Entry of Decision states that Crestlawn “agrees to the entry of the proposed decision in this case, but [it] does not certify that no party objects to the granting of the Commissioner’s Motion for Entry of Decision.”

On August 19, 2024, Thomas Rousch, a partner of Crestlawn, timely filed a Motion for Leave to File Notice of Election to Participate and a Notice of Election to Participate pursuant to Rule 248(b)(4). Also on August 19, 2024, 38 additional partners of Crestlawn each filed a Motion for Leave to File Notice of Election to Participate and a Notice of Election to Participate.<sup>5</sup> The individual Motions and Notices filed by

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<sup>4</sup> “Participating partners are the partner who filed the petition and such other partners who have filed either a notice of election to intervene or a notice of election to participate in accordance with the provisions of Rule 245.” Rule 247(b).

<sup>5</sup> The following individuals filed Motions for Leave to File Notice of Election to Participate at docket entry 24: Adam Silbiger, Anatoli Semenov, Anthony Morell, Calvin Scott Akers, Christopher Brooker, Danniell Stites, Drea Besch, Erik Loesch, Edwin Yaeger, Eugene Bachini, Funda Bachini, James Daniel Fogarty, Jeffrey Morris, Jeffrey Sprout, Joel Jackson, John Struble, Julia May, Justin Garzone, Katherine Akers, Kevin L. Donahoe, Manan Shah, Mark Wimberly, Melissa Morell, Nathan Clark, Navjot Atwal,

the 38 partners were filed with the Court as a single document, rather than separately filed. The Court determined that the Motions were timely filed but did not conform to the Court's Rules. Therefore, by Order dated September 6, 2024, the Court directed each Objecting Nonparticipating Partner to separately file a Motion for Leave to File a Notice of Election to Participate and to lodge therewith a separate Notice of Election to Participate.

On September 20, 2024, each Objecting Nonparticipating Partner filed anew a Motion for Leave to File Notice of Election to Participate, each lodging therewith a Notice of Election to Participate. The Motions indicate each Objecting Nonparticipating Partner is a "party" to this case, as defined by Rule 247 and section 6226(c), and "does not want to accept the . . . settlement and wishes to participate" pursuant to Rule 248(b)(4). The Motions do not address the procedural requirements for participation in a TEFRA case pursuant to Rules 245 and 248.

On December 6, 2024, after being granted an extension, respondent filed a Response to each Motion and a Memorandum of Law in Support of Respondent's Responses to Motions for Leave to File Notices of Election to Participate. Respondent argues that the Objecting Nonparticipating Partners did not "make a 'substantial showing' of their preparedness to litigate [this] case on the merits," noting that they "failed to address [the] factual and legal complexity [of this case] and have not indicated any plan to prosecute the case accordingly." Respondent further asserts the Objecting Nonparticipating Partners have made no "substantial showing" that the Proposed Decision is "unreasonable or otherwise faulty."

Also on December 6, 2024, after being granted an extension, petitioner filed a Response to each Motion, a Memorandum of Law in Support of Responses to Motions, and a Declaration

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Neil Ortkiese, Nicholas May, Nicole Nadel, Rakesh Patel, Scott Drobos, Shailesh Patel, Shital Mehta, Thai Nguyen, Theresa Pagano, Thomas Scott Quinn, Timothy Pollock, Tri Minh Nguyen, and Kenneth Brian Hall. Petitioner represents that the following parties have joint ownership of their interests in Crestlawn: Calvin Scott Akers and Katherine Akers, Eugene Bachini and Funda Bachini, Nicholas May and Julia May, Anthony Morell and Melissa Morell, and Rakesh Patel and Navjot Atwal. *Ryan C. Pulver* represents the 39 Objecting Nonparticipating Partners and filed the Motions and Amended Motions on their behalf.

of Gregory P. Rhodes with Exhibits A through F (Rhodes Declaration). Petitioner argues that the Objecting Nonparticipating Partners have not stated a “substantial or legal basis why [r]espondent’s Motion for Entry of Decision should be denied, why the settlement agreement is not suitable to them, why the [TMP] is not acting in their best interest with the settlement agreement that he agreed to, or any indication that any or all of them are prepared to ‘litigate the case on the merits.’”<sup>6</sup>

On December 23, 2024, the Court ordered the Objecting Nonparticipating Partners to amend their Motions “to illustrate their *preparedness to litigate this case on the merits* and set forth *reasons why* respondent’s Motion for Entry of Decision should not be granted or otherwise make a substantial showing for their Motions, if any.”

On February 7, 2025, in response to the Court’s Order to amend their Motions to make a substantial showing dated December 23, 2024, as supplemented on December 30, 2024, and January 3 and 22, 2025, each Objecting Nonparticipating Partner filed a First Amended Motion for Leave to File Notice of Election to Participate, each lodging therewith a Notice of Election to Participate. The Amended Motions again indicate that the Objecting Nonparticipating Partners do not want to accept the settlement and that they wish to participate pursuant to Rule 248(b)(4). The Amended Motions further represent that the Objecting Nonparticipating Partners “adopt[] all of the allegations set forth by [Blomquist] in the Tax Court [P]etition,” that the Motion for Entry of Decision “does not adequately represent the position of” the Objecting Nonparticipating Partners, who wish to continue the case apart from Blomquist, that the Objecting Nonparticipating Partners are “prepared for this [c]ase to be set for trial in Atlanta, Georgia[,] and to go forward,” and that the Objecting Nonparticipating Partners “understand[] that the Tax Court may render a decision that is worse for [them] than the settlement terms in the Motion for Entry of Decision.” The Amended Motions do not address the procedural

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<sup>6</sup> Petitioner’s lead argument is that the Court should allow petitioner to continue with its settlement regardless of whether the Court grants the Objecting Nonparticipating Partners’ Motions. Because the Court will deny the Amended Motions, the Court does not address this argument.

requirements for participation in a TEFRA case pursuant to Rules 245 and 248.

On March 3, 2025, respondent filed a Response to the Court's Order dated February 12, 2025, supplementing his Responses and supporting Memorandum, filed December 6, 2024, to address the Amended Motions filed February 7, 2025. Respondent reaffirms the objections set forth in respondent's Responses and supporting Memorandum, filed December 6, 2024, and further argues that the Amended Motions do not address the shortcomings of the Motions as originally filed.

Also on March 3, 2025, petitioner filed a Response to the Court's Order dated February 12, 2025, supplementing its Responses and supporting Memorandum, filed December 6, 2024, to address the Amended Motions filed February 7, 2025. Petitioner maintains the position it set forth in its Responses and supporting Memorandum, filed on December 6, 2024, again asserting that the Objecting Nonparticipating Partners have not provided independent statements showing their preparedness to litigate this case, and they have not demonstrated that the settlement terms are contrary to their interests.

On May 2, 2025, in response to the Court's Order dated March 19, 2025, directing the Objecting Nonparticipating Partners to respond to both petitioner's and respondent's substantive arguments regarding why the Court should deny the Motions, each Objecting Nonparticipating Partner filed a Response to Petitioner's Response to First Amended Motion for Leave to File Notice of Election to Participate and a Response to Respondent's Response to First Amended Motion for Leave to File Notice of Election to Participate. The Objecting Nonparticipating Partners argue that the Court should allow them to participate in this case because (1) they have a statutory right to participate, (2) they have adequately demonstrated their readiness to litigate this case, (3) the TMP lacks authority to bind them to the proposed settlement, (4) the indirect TMP, Eugene Pearson, is subject to a conflict of interest in entering the settlement agreement, and (5) an affiliate of petitioner communicated to the partners of another partnership that those partners who disagreed with a settlement similar to that in this case could "intervene or participate."

At the close of the taxable year ending December 31, 2017, Blomquist was owned by Crestlawn (97.711%), Blake

Blomquist (1.289%), and Jennifer Blomquist (1%).<sup>7</sup> Petitioner represents that during taxable year 2017 Crestlawn had 146 partners. Each partner of Crestlawn, including each Objecting Nonparticipating Partner, was an indirect partner of Blomquist. See § 6231(a)(10). The Objecting Nonparticipating Partners collectively owned 21.915% of Crestlawn and, thus, 21.413% of Blomquist.<sup>8</sup> Therefore, the partners of Crestlawn who have not objected to respondent's Motion for Entry of Decision collectively own 78.085% of Crestlawn and 76.298% of Blomquist.<sup>9</sup>

### *Discussion*

#### *I. An overview of TEFRA and related Tax Court Rules of Practice and Procedure*

Congress's goal in enacting TEFRA was to provide "a method for uniformly adjusting items of partnership income, loss, deduction, or credit that affect each partner." *Boyd v. Commissioner*, 101 T.C. 365, 369 (1993) (quoting *Maxwell v. Commissioner*, 87 T.C. 783, 787 (1986)). Before the enactment of TEFRA, deficiency determinations involving items of income, loss, deduction, or credit of a partnership were made separately for each partner. *Maxwell*, 87

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<sup>7</sup> All ownership percentages stated in this Opinion are as of December 31, 2017, and rounded to the nearest thousandth.

<sup>8</sup>  $21.915\% \times 97.711\% = 21.413\%$ . In their May 2, 2025, Court filings, the Objecting Nonparticipating Partners represented that they "collectively represent approximately 48% of the partnership interests in Crestlawn," and thus represent a substantial economic interest that seeks to litigate the substantive merits of the case. However, counsel for the Objecting Nonparticipating Partners has now informally represented to the Court that, upon further review of their ownership representation, the corrected amount of their collective ownership is approximately 22%. Petitioner's Rhodes Declaration included as Exhibit E a list of Crestlawn partners, which sets forth each partner's ownership interest in Crestlawn for the taxable year ending December 31, 2017. Exhibit E indicates that the Objecting Nonparticipating Partners collectively owned 21.915% of Crestlawn. The Court will treat Exhibit E as the correct ownership chart.

<sup>9</sup>  $78.085\% \times 97.711\% = 76.298\%$ . On May 5, 2025, another partner of Crestlawn filed an untimely Motion for Leave to File Notice of Election to Participate (Late-Filing Partner). Even if the Court took this untimely Motion into consideration, the Late-Filing Partner owned only 0.519% of Crestlawn, with the remaining nonobjecting partners owning 77.566% of Crestlawn and 75.791% of Blomquist ( $77.566\% \times 97.711\% = 75.791\%$ ).

T.C. at 787. This caused administrative problems for the IRS, particularly in auditing returns of partnerships with numerous partners. *Boyd*, 101 T.C. at 368–69. Because deficiencies related to partnership items were determined separately for each partner, two partners could have two different outcomes regarding the same partnership item, a settlement by one partner would not bind the other partners regarding the same partnership item, and similarly, judicial determination of a partnership item was generally conclusive only to the partner or partners that were parties to the proceeding. See *Maxwell*, 87 T.C. at 787. After TEFRA was enacted, a partner’s tax liability relating to a partnership interest was no longer determined separately at the partner level. Rather, with exceptions not relevant here, Congress decided that the tax treatment of partnership items would be determined uniformly at the partnership level. § 6221. The partnership proceeding is then followed by separate collections from individual partners. *Goldberg v. Commissioner*, 73 F.4th 537, 539 (7th Cir. 2023), *aff’g* T.C. Memo. 2021-119.

When the IRS commences a partnership audit, it must mail to certain partners, including the TMP, a notice of the beginning of the administrative proceeding (NBAP). § 6223(a)(1). If the audit results in any adjustments to the partnership items, the IRS must provide an FPAA. § 6223(a)(2). The TMP must keep the partners informed of all administrative and judicial proceedings for the adjustment of partnership items at the partnership level. § 6223(g).

If a partnership holds an interest in the partnership with respect to which TEFRA proceedings are conducted, that partnership holding the interest is known as a “pass-thru partner.” § 6231(a)(9). A person holding an interest in a partnership through one or more pass-thru partners is an “indirect partner.” § 6231(a)(10). Within 30 days of receiving any IRS notice pursuant to section 6223(a), such as the NBAP or the FPAA, the pass-thru partner must forward a copy of that notice to the indirect partners. § 6223(h)(1). When the pass-thru partner is a partnership, the TMP of the pass-thru partner is responsible for forwarding the notices to the indirect partners. § 6223(h)(2).

To seek judicial review of an FPAA, a petition for a readjustment of the partnership items for the applicable taxable

year must be timely filed in (1) the Tax Court, (2) the district court of the United States for the district in which the partnership's principal place of business is located, or (3) the U.S. Court of Federal Claims. § 6226(a). The resulting action will be "conducted in accordance with such rules of practice and procedure as may be prescribed by the Court in which the action is brought"—here, the Tax Court. § 6230(l).

Only the TMP may file a petition during the 90 days following the day the IRS mails the FPAA to the TMP. § 6226(a). If the TMP does not file a petition within that 90-day period, then any notice partner may file a petition during the 60-day period following the initial 90-day period. § 6226(b)(1). The TMP may intervene in any action brought under section 6226(b). § 6226(b)(6). If an action is brought by either the TMP or a notice partner with respect to a partnership for any partnership taxable year, then with exceptions not relevant here, each person who was a partner in that partnership at any time during that year, including an indirect partner, is a party to the action, and the court having jurisdiction over the action "shall allow each such person to participate in the action." §§ 6226(c), 6231(a)(2).

The TMP is the central figure during litigation proceedings such as these. *Comput. Programs Lambda, Ltd. v. Commissioner*, 89 T.C. 198, 205 (1987). The TMP "serves as the focal point for service of all notices, documents, and orders on the partnership" and "is required to keep all partners informed of the status of" the judicial proceedings. § 6223(g); *Comput. Programs Lambda*, 89 T.C. at 205. In executing his responsibilities the TMP acts as a fiduciary and must act on the partnership's behalf regardless of his personal posture. *Comput. Programs Lambda*, 89 T.C. at 205. Therefore, the TMP's actions during litigation proceedings are "plainly designed to affect the rights of all partners in the partnership." *Id.* at 205–06.

In 1984 the Tax Court issued Rules under Title XXIV, Partnership Actions, of the Tax Court Rules of Practice and Procedure, setting forth procedures for partnership actions under sections 6226 and 6228. Rule 244, Intervention and Participation, provided that a partner treated as a party to the action within the meaning of section 6226 could participate in the action by filing a notice of election to participate with the Court within 210 days from the date of mailing of the

FPAA to the TMP. Rule 244(b)(1), 82 T.C. 1083 (amended 1988 and redesignated Rule 245). It also provided that the Court had the discretion to grant leave to a partner to file a notice of election to participate out of time upon a showing of sufficient cause. Rule 244(c), 82 T.C. 1084. The Notes to the 1984 Amendments to Rules of Practice and Procedure of the United States Tax Court provided an example of sufficient cause:

[I]n an action for readjustment of partnership items, a motion for leave to file the notice out of time ordinarily will be granted where it is shown that the partner timely filed a notice of election to intervene or to participate in another action with respect to the same partnership and that such other action was dismissed (see Code Section 6226(b)(4)), if such motion is filed promptly after the dismissal of such other action.

Rule 244 note, 82 T.C. 1085; *see also Comput. Programs Lambda*, 89 T.C. 198 (granting partner leave to file an election to participate in the partnership action out of time pursuant to Rule 244(c), 82 T.C. 1084, when the action brought by the partner was dismissed pursuant to section 6226(b)(4)). The Rule also contemplated that the Court had the discretion to grant leave to file the notice out of time “upon *other showings of good cause*.” Rule 244 note, 82 T.C. 1085 (emphasis added).

In 1988 the Court revised its Rules, making substantive amendments to the Rules under Title XXIV. As relevant here, the Court added Rule 248, Settlement Agreements; added Rule 250, Appointment and Removal of the Tax Matters Partner; made significant revisions to Rule 241, Commencement of Partnership Action; and redesignated and made significant revisions to Rule 245, Intervention and Participation (originally designated Rule 244). Under the new Rule 245, the period in which a partner could elect to participate in an action without leave of the Court was changed to “90 days from the date of service of the petition by the Clerk on the Commissioner.” Rule 245(b), 90 T.C. 1369. Rule 245(c), Enlargement of Time, was unchanged from former Rule 244(c), 82 T.C. 1084, still providing that “[t]he Court may grant leave to file . . . a notice of election to participate out of time *upon a showing of sufficient cause*.” Rule 245(c), 90 T.C. 1369 (emphasis added).

The Notes to the 1988 Amendments to Rules of Practice and Procedure of the United States Tax Court (Notes to the 1988 Amendments) explain that the amendment to Rule 245(b) was

“designed to shorten the period of time between the filing of a petition and joinder of issue in partnership actions.” Rule 245 note, 90 T.C. 1370. This was meant to “facilitate the calendaring of such actions for trial at an earlier date” and “also facilitate the determination of the period within which a notice of election . . . to participate . . . may be filed.” *Id.* Rule 241, Commencement of Partnership Action, in turn, was amended to ensure that the TMP notifies every partner of the filing of a petition and provides the assigned docket number and the date the petition was served by the Clerk on the Commissioner, because “[t]he date on which the petition is served by the Clerk on the Commissioner commences the 90-day period within which notices of election may be filed without leave of Court.” Rule 241 note, 90 T.C. 1367.

Rule 248, Settlement Agreements, was “intended to provide comprehensive procedures applicable to settlement agreements which may affect some or all of the parties to a partnership action.” Rule 248 note, 90 T.C. 1374. Rule 248 contemplates three settlement postures. First, if the TMP can certify that no party objects to a stipulation consenting to entry of decision, then the procedures under Rule 248(a) apply. Second, if all participating partners have entered into a settlement agreement or consistent agreement with the Commissioner, or if no participating partner objects to the granting of the Commissioner’s motion for entry of decision, and the TMP agrees to the proposed decision but cannot certify that no party objects to the granting of the Commissioner’s motion, then the procedures under Rule 248(b) apply. Third, if the Commissioner reaches a settlement agreement with one or more, but not all participating partners, or one or more of the participating partners objects to the granting of the motion for entry of decision, then the procedures under Rule 248(c) apply.

Rule 248(b), the operative rule in this case, provides a mechanism for entry of decision if all participating partners (including the TMP, if the TMP is a participating partner) have either entered into a settlement or consistent agreement with the Commissioner or do not object to such settlement agreement, but the TMP cannot certify that no party objects to the entry of a decision consistent with the settlement agreement. In such a case the Commissioner shall file a motion for

entry of decision and submit with the motion a proposed form of decision. Rule 248(b)(1). “Within 3 days from the date on which the Commissioner’s motion for entry of decision is filed with the Court, the Commissioner shall serve on the [TMP] a certificate showing the date on which the Commissioner’s motion was filed with the Court.” Rule 248(b)(2). Then, within three days after receiving the Commissioner’s certificate, the TMP shall serve on all other parties to the action other than the participating partners a copy of the motion, a copy of the proposed decision, a copy of the Commissioner’s certificate, and a copy of Rule 248. Rule 248(b)(3). Settlement pursuant to Rule 248(b) then provides one final opportunity for a party to the action to seek leave to participate: Any party to the action who wishes to object to the granting of a motion for entry of decision under Rule 248(b) “shall . . . file a motion for leave to file a notice of election” to participate within 60 days from the date on which the motion for entry of decision is filed with the Court. Rule 248(b)(4) (emphasis added). The motion for leave must be accompanied by a separate notice of election to participate. *Id.*

Rule 248(b)(4) cross-references Rule 245, which sets forth the procedures for intervention and participation. Additionally, the Notes to the 1988 Amendments contemplate that a nonparticipating partner objecting pursuant to Rule 248(b)(4) “would have to make a substantial showing in order for the Court to grant their motion.” Rule 248 note, 90 T.C. 1376 (emphasis added). Therefore, should a party wait until a motion for entry of decision is filed before requesting leave to file a notice of election to participate, the bar to participation out of time is even higher: A partner wishing to participate under Rule 248(b)(4) would need to provide a substantial showing for the Court to grant the motion for leave to file a notice of election to participate pursuant to that Rule, as compared to the sufficient cause required by Rule 245(c).

Finally, Rule 250 provides that “[a]fter notice and opportunity to be heard . . . the Court may for cause remove a partner as the [TMP].” Rule 250(b). The Notes to the 1988 Amendments indicate that the Rule recognizes that partnership litigation under Title XXIV requires that there be a functioning TMP, stating that the purpose of Rule 250 is “to guarantee the Court’s involvement in insuring that there is

a functioning [TMP] during the pendency of the partnership litigation.” Rule 250 note, 90 T.C. 1378. “Rule 250(b) deals with the situation where the [TMP] is not functioning as such.” *Id.* at 1379. The purpose of Rule 250(b) is to advise the parties that the Court may remove a TMP for cause. *Id.* Reasons for removing a TMP include (but are not limited to) “the incarceration of the [TMP] and a material breach of fiduciary duty by the [TMP].” *Id.*

## II. Analysis

### A. A party that wishes to participate in a TEFRA action pursuant to section 6226 must comply with the Tax Court Rules of Practice and Procedure.

The Objecting Nonparticipating Partners first argue they have a statutory right to participate in this case under section 6226(c). They assert that the statute “does not impose qualifications, special showings, or demonstrations of necessity,” and therefore they have an absolute right to participate at any point, including at the last minute before a decision is entered.<sup>10</sup>

The timeliness required to participate pursuant to section 6226 does not “impose qualifications, special showings, or

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<sup>10</sup> In support of this assertion the Objecting Nonparticipating Partners cite caselaw that simply restates or summarizes the text of section 6226 and Rules 245(b) and 248(b). *See, e.g., BCP Trading & Invs., LLC v. Commissioner*, 991 F.3d 1253, 1272 (D.C. Cir. 2021) (“If a tax case settles, Tax Court Rule 248 requires the Commissioner to move for entry of decision and the court to wait 60 days to see if a non-participating party objects to the settlement before issuing its decision.” (citing Rule 248(b)(4)), *aff’g* T.C. Memo. 2017-151; *Columbia/St. David’s Healthcare Sys. LP v. Commissioner*, No. 0060813, 2001 WL 822471, at \*3 (5th Cir. June 19, 2001) (“Any partner who satisfies the requirements of [section] 6226(d) ‘may participate in the action by filing a notice of election to participate with the Court.’” (quoting Rule 245(b))); *Davenport Recycling Assocs. v. Commissioner*, 220 F.3d 1255, 1257 n.6 (11th Cir. 2000) (“Under [s]ection 6226(c), any partner with an interest in the outcome of the proceeding is entitled to participate in an action brought by the TMP or a notice partner, thereby ensuring that all partners may litigate a dispute with the IRS in a single proceeding.”), *aff’g* T.C. Memo. 1998-347. None of the cases cited by the Objecting Nonparticipating Partners indicates that a party has an absolute right to participate in a case at the last moment before a decision is entered without a substantial showing as to why the party should be permitted to participate at such a late stage in the litigation.

demonstrations of necessity” on the right to participate. It does not alter the substantive rights of a party to participate in the action. Rather, it provides the appropriate procedures a party is required to follow, when an action is before this Court, if the party would like to participate pursuant to section 6226(c). See § 6230(l) (“Any action brought under any provision of this subchapter shall be conducted in accordance with such rules of practice and procedure as may be prescribed by the Court in which the action is brought.”).

The U.S. Supreme Court and other federal courts have dealt extensively with an analogous question under Rule 24 of the Federal Rules of Civil Procedure (Fed. R. Civ. P.), relating to intervention. Like Rules 245(c) and 248(b)(4), Fed. R. Civ. P. 24 includes a timeliness requirement even when a statute provides an unconditional right to intervene.<sup>11</sup>

While Fed. R. Civ. P. 24 deals with intervention rather than participation, the difference between the two is not material to the issue of timeliness. Intervention is defined as “[t]he entry into a lawsuit by a third party who, despite not being named a party to the action, has a personal stake in the outcome.” *Intervention*, *Black’s Law Dictionary* (12th ed. 2024). Under TEFRA, a partner eligible to participate under section 6226(c) is a party to the action. Therefore, rather than intervening, the partner would simply be participating in the action. In either case a third party or a party is attempting to actively take part in the action, and the timeliness requirement ensures judicial economy and limits prejudice to the existing parties or participating partners.

Additionally, federal courts apply Fed. R. Civ. P. 24(a) in deciding whether to allow a party to participate pursuant to section 6226 in a partnership action in district court. See § 6230(l). In so doing, they consider whether a motion to

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<sup>11</sup> Fed. R. Civ. P. 24 provides the following, in relevant part:

(a) Intervention of Right. On timely motion, the court must permit anyone to intervene who:

(1) is given an unconditional right to intervene by a federal statute; or

(2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant’s ability to protect its interest, unless existing parties adequately represent that interest.

participate is timely under that rule. *See, e.g., Twenty-Two Strategic Inv. Funds v. United States*, No. C 05-2835, 2005 WL 3369998 (N.D. Cal. Dec. 12, 2005) (finding that a motion to participate pursuant to section 6226 filed within three months from the date the TMP filed the petition was timely pursuant to Fed. R. Civ. P. 24(a) because the proceeding was still at a relatively early stage, the other parties did not raise any claims of prejudice, and there was not a lengthy delay). Thus, federal caselaw analyzing the application of Fed. R. Civ. P. 24 is illustrative in examining the requirements of Rules 245(c) and 248(b)(4).

The U.S. Supreme Court and other federal courts, including the Eleventh Circuit, have recognized there are temporal limits on unconditional statutory rights to intervene under Fed. R. Civ. P. 24. *See, e.g., NAACP v. New York*, 413 U.S. 345, 365 (1973) (“Whether intervention be claimed of right or as permissive, it is at once apparent, from the initial words of both Rule 24(a) and Rule 24(b), that the application must be ‘timely.’ If it is untimely, intervention must be denied.”); *Smith Petroleum Serv., Inc. v. Monsanto Chem. Co.*, 420 F.2d 1103, 1115 (5th Cir. 1970) (“It is true, of course, that an application for intervention, whether as a matter of right or permissive, must in every case be timely . . . .”);<sup>12</sup> *Chimney Rock Holdings, LLC v. Commissioner*, T.C. Memo. 2025-39, at \*8–9 (collecting cases). Rules 245(c) and 248(b) provide similar temporal limits.

While a motion to intervene under Fed. R. Civ. P. 24 must always be analyzed for timeliness, Rule 245(b) provides parties to the action with 90 days from the date the petition is served on the Commissioner to file a notice of election to participate without leave of Court. Thus Rule 245(b) is less restrictive than Fed. R. Civ. P. 24. If a party wants to participate after the initial 90 days have passed, then the party must provide sufficient cause for filing the election out of time. The sufficient cause requirement promotes judicial efficiency by ensuring that all participating partners are identified at the start of the action. Otherwise, partners who are negligent in protecting

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<sup>12</sup> In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), the Eleventh Circuit adopted as binding precedent all decisions of the U.S. Court of Appeals for the Fifth Circuit handed down before the close of business on September 30, 1981.

their interests from the start could jump in at a later stage, after substantial progress has already been made by those parties who exercised diligence in protecting their rights. The even higher bar of the substantial showing required under Rule 248(b) is necessary to ensure that nonparticipating partners do not stand by and let others do the work, and then “swoop in at the last minute and disrupt proposed settlements of cases involving TEFRA entities, which often involve . . . complex and time-consuming issues.” *Chimney Rock Holdings*, T.C. Memo. 2025-39, at \*10–11.

The Objecting Nonparticipating Partners are correct that they have a statutory right to participate in this case under section 6226(c). Rule 245(b) afforded them the right to participate without “qualifications, special showings, or demonstrations of necessity.” The Objecting Nonparticipating Partners did not avail themselves of that right. Nor did they attempt to participate out of time pursuant to Rule 245(c), although they had three years to do so.

Instead, the Objecting Nonparticipating Partners waited until the last minute before a decision was entered before attempting to participate in this case, claiming that section 6226(c)(2) provides them with an absolute right to participate, regardless of this Court’s Rules. As this Court has previously held, section 6226(c)(2) does not give nonparticipating partners the absolute right to participate at this stage of the litigation. *Chimney Rock Holdings*, T.C. Memo. 2025-39, at \*11. Rather, when nonparticipating partners request leave to file an election to participate pursuant to Rule 248(b)(4) they “must make a substantial showing as to why they should be permitted to participate.” *Chimney Rock Holdings*, T.C. Memo. 2025-39, at \*11; *see also Oceanic Leasing v. Commissioner*, T.C. Memo. 1996-458, slip op. at 15 (denying a motion for leave to file a notice of election to participate because it “did not set forth any independent statements to show [the partner’s] preparedness to litigate the case on the merits or reasons why [the Commissioner’s] Motion for Entry of Decision should not be granted”).

*B. The Objecting Nonparticipating Partners did not make a substantial showing.*

Timeliness in the context of Fed. R. Civ. P. 24 requires prompt action upon discovery of circumstances that necessitate intervention to protect the intervenor's interests. *United Airlines, Inc. v. McDonald*, 432 U.S. 385, 395–96 (1977) (“The critical inquiry in every such case is whether in view of all the circumstances the intervenor acted promptly . . .”). Similarly, the Tax Court has previously found that a party made a substantial showing for leave to file a notice of election to participate pursuant to Rule 248(b) when the proposed decision submitted with the Commissioner's motion for entry of decision, or other circumstances surrounding the settlement agreement, indicated that the TMP may not have protected the party's interests or otherwise breached his fiduciary duties during the negotiations culminating in the motion for entry of decision. Thus, in those cases, the parties requesting leave to file notices of election to participate pursuant to Rule 248(b) acted promptly upon discovery that the TMP was not protecting their interests. *See, e.g., Order, Gramercy Fin. Grp. LLC v. Commissioner*, No. 25740-17 (T.C. Nov. 6, 2019) (order granting an objecting party's motion for leave to file a notice of election to participate and denying a motion for entry of decision under Rule 248(b) when the proposed settlement, which was negotiated and agreed upon by the TMP and another participating partner, included the recharacterization of a \$16 million partnership expense as a \$13.6 million distribution to be allocated to the objecting party—a concession by the TMP that negatively affected the objecting party but not the TMP, suggesting the TMP was not protecting the objecting party's interests); *Order, Long Leaf Prop. Holdings, LLC v. Commissioner*, No. 11982-16 (T.C. July 23, 2021) (order denying a motion for entry of decision and granting motions for leave to file a notice of election to participate pursuant to Rule 248(b) filed by two partners, who together held 99% of the partnership interest, where the TMP had conceded the case in full, represented that he intended only to settle his de minimis interest in the partnership, and represented that he agreed to the settlement to trigger Rule 248(b) and

transfer the responsibility of litigating the case to the objecting partners).<sup>13</sup>

In support of their assertion that they have made a substantial showing as to why they should be permitted to participate in this case pursuant to Rule 248(b)(4), the Objecting Nonparticipating Partners argue that they have adequately demonstrated their readiness to litigate the case. The Objecting Nonparticipating Partners state that they have retained experienced tax counsel, formed a special purpose LLC to coordinate the logistics and financing of the litigation, timely filed their Notices of Election to Participate,<sup>14</sup> explicitly stated their objection to the proposed settlement as inadequate, acknowledged and accepted the risks of litigation, demonstrated their readiness to proceed to trial, and engaged qualified experts who will testify regarding the proper valuation of the conservation easement.

Although the Objecting Nonparticipating Partners have described actions they have taken in preparation to litigate this case, they have not alleged that the terms of the settlement are unreasonable or otherwise made any argument regarding the substantive facts of the case. They have merely stated that they desire to continue this case apart from the partnership because the Motion for Entry of Decision does not adequately represent their position, they do not want to accept the settlement, and they wish to participate. There is no indication that the Objecting Nonparticipating Partners have any evidence to show that the settlement amount is unreasonable,

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<sup>13</sup> The Objecting Nonparticipating Partners argue that *Long Leaf* “strongly supports” their “right to participate,” because it was a “remarkably similar situation” to the one in this case. The Court disagrees. None of the facts of *Long Leaf* appears in this case. Crestlawn has represented that it entered into the settlement agreement on behalf of Blomquist, and the Objecting Nonparticipating Partners make up only 21.413% of Blomquist. Further, Crestlawn did not make “a full concession of the case.” Rather, the settlement provides for an \$11,657,800 deduction and a 10% (rather than a 20% or a 40%) penalty; and it further provides that the allowed deduction would not be subject to the 2% of adjusted gross income floor under section 67. *Long Leaf* does not support granting the Objecting Nonparticipating Partners’ Amended Motions.

<sup>14</sup> The Objecting Nonparticipating Partners timely filed their Motions for Leave to File Notice of Election to Participate in this case. The Notices of Election to Participate are not filed but are currently lodged with the Court pending the outcome of the Amended Motions.

especially considering that a potential 40% penalty has been reduced to 10%, the partners have been permitted an increase in their Other Deductions, and each partner's share of the Other Deductions will not be reduced by 2% of such partner's adjusted gross income through operation of section 67. Additionally, the proposed settlement will avoid the cost of continuing this litigation, potentially through trial.

The Objecting Nonparticipating Partners argue that Crestlawn lacks the authority to bind them to the proposed settlement. They assert that there are questions as to the "existence of majority partner consent for the settlement." They state that they believe Mr. Pearson, as TMP of Crestlawn, "improperly counted [nonresponsive] votes as affirmative votes when seeking partnership approval for the settlement." This leads them to speculate that Mr. Pearson may not have received consent to settle this case.

The Objecting Nonparticipating Partners do not provide any evidence that Mr. Pearson counted nonresponsive votes as affirmative votes. Nor do they specify the number of purportedly nonresponsive votes that Mr. Pearson counted as affirmative. Considering that the Objecting Nonparticipating Partners collectively hold only 21.915% of Crestlawn and that approximately 78% of Crestlawn's partners have not objected to the proposed settlement in this case, the Court finds this argument unpersuasive. The assertion that Mr. Pearson did not obtain consent from a majority of the partners is based on speculation and statements that are unsupported by evidence. The argument that Crestlawn lacks the authority to bind the Objecting Nonparticipating Partners to the proposed settlement does not constitute a substantial showing. Further, a motion for entry of decision pursuant to Rule 248(b) does not state a requirement of consent by the majority of the partners, only that the TMP agreed to the proposed decision but did not certify that no partner objected to it.

The Objecting Nonparticipating Partners next argue that the TMP of Crestlawn, Mr. Pearson, is subject to a conflict of interest in entering into the settlement agreement. They assert that Mr. Pearson has been the subject of a Senate Finance Committee investigation regarding conservation easements, and that he was, and may still be, subject to an IRS criminal investigation. They further assert that he was directly

involved in another conservation easement transaction in which the Commissioner imposed the civil fraud penalty. Other than referencing this Court's memorandum opinion in *North Donald LA Property, LLC v. Commissioner*, T.C. Memo. 2023-50, the Objecting Nonparticipating Partners provide no evidence to support their assertions. The *North Donald* memorandum opinion does not mention Mr. Pearson, and it does not substantively address the civil fraud penalty asserted in that case. Rather, it holds that the Commissioner obtained supervisory approval to assert various penalties, including the civil fraud penalty under section 6663, in compliance with section 6751(b). *N. Donald LA Prop.*, T.C. Memo. 2023-50, at \*14.

An investigation into a TMP will not automatically disqualify a TMP from negotiating and entering into a settlement agreement with the IRS. See *Madison Recycling Assocs. v. Commissioner*, 295 F.3d 280, 288–89 (2d Cir. 2002) (citing *Phillips v. Commissioner*, 114 T.C. 115, 132 (2000), *aff'd*, 272 F.3d 1172 (9th Cir. 2001)), *aff'g* T.C. Memo. 2001-85; *Phillips*, 114 T.C. at 132 (“[T]he mere existence of an investigation [targeting the TMP does not, in and of itself,] subvert a tax matters partner’s judgment and bend him to the government’s will in dereliction of his fiduciary duties to his partners.” (quoting *Olcsvary v. United States (In re Olcsvary)*, 240 B.R. 264, 267 (E.D. Tenn. 1999))).

To support their conflict-of-interest argument, the Objecting Nonparticipating Partners rely on *Transpac Drilling Venture 1982-12 v. Commissioner*, 147 F.3d 221 (2d Cir. 1998), *rev'g and remanding* T.C. Memo. 1994-26. In *Transpac* the TMPs of various related partnerships signed period of limitations extensions. The U.S. Court of Appeals for the Second Circuit found the extensions invalid because the TMPs had conflicts of interest at the time they signed the extensions on behalf of the partnerships. Not only were the TMPs under criminal investigation, but they had turned government witnesses in exchange for immunity or reduced sentences. Additionally, the IRS had initially approached the individual partners to request extensions but almost all had declined. It was then that the IRS sought extensions from the TMPs, knowing that the partners for whom the TMPs were purporting to act had affirmatively declined to agree to extend the periods of limitations.

The salient facts of *Transpac* are not present in this case. There is no evidence that Mr. Pearson has agreed to become a government witness in exchange for immunity or reduced sentencing, or that he has otherwise agreed to the settlement in exchange for some benefit to himself. Nor does the record provide any evidence to suggest that Mr. Pearson agreed to a settlement that most of Crestlawn's owners had previously affirmatively rejected. The Objecting Nonparticipating Partners have not shown that there is any reason to believe the settlement agreement between Crestlawn and the IRS was influenced by any investigation or that another case has in any way influenced the TMP's decision to agree to the settlement. The assertion that Mr. Pearson was operating under a conflict of interest is not supported by any concrete facts or supporting documentation and amounts to mere speculation about the possibility of a conflict.

Further, the Objecting Nonparticipating Partners have not shown that this alleged conflict was recently discovered. In fact, in support of their assertions they reference a Senate Finance Committee investigation. The Senate Finance Committee published a report of this investigation in August 2020—*four years before* the Objecting Nonparticipating Partners filed their Motions in this case, and *eight months before* the Petition was filed in this case. Staff of S. Comm. on Fin., 116th Cong., *Syndicated Conservation-Easement Transactions* (Comm. Print 2020). They also reference the *North Donald* memorandum opinion, which was filed on April 18, 2023—*16 months before* the Objecting Nonparticipating Partners filed their Motions in this case.

The Senate Finance Committee report was published *before* the Petition was filed in this case. If the partners were concerned that Mr. Pearson had a conflict of interest because of the Senate Finance Committee investigation, they were free to file notices of election to participate within 90 days of the date the Clerk served the Petition on respondent. *See* Rule 245(b). Additionally, the Court's Rules provide nonparticipating partners with at least two ways to ensure their interests are protected should they discover that a TMP has a potential conflict of interest after a petition has been filed and the period for filing a notice of election to participate has passed: (1) move the Court to remove the TMP for

cause pursuant to Rule 250(b) or (2) file a motion for leave to file a notice of election to participate out of time under Rule 245(c). The Objecting Nonparticipating Partners did not avail themselves of any of these options, suggesting they were not concerned that the purported conflict of interest would render Mr. Pearson unable to represent their interests.

Finally, the Objecting Nonparticipating Partners argue that an affiliate of petitioner communicated to the partners of the affiliate that those who disagreed with a settlement similar to that in this case could “intervene or participate.” In support of this argument, the Objecting Nonparticipating Partners provide a letter dated February 10, 2025, to “The Members of Walker Church Greene 819, LLC and 830 Oconee, LLC,” and signed by “Eugene E. Pearson, Jr.” But the letter does not state that the partners who disagreed with the settlement in that case could “intervene or participate.” Rather, the letter states that “[i]f you do not agree with the settlement and wish to continue the case before the Tax Court, you have the right to *file a motion for leave* to file a notice of election to intervene or participate.” (Emphasis added.) The letter, consistent with Rule 248(b), explains that the partners have a *right to file a motion for leave*—the exact action taken by the Objecting Nonparticipating Partners in this case.

### III. Conclusion

While the Objecting Nonparticipating Partners assert that they stand ready and financially able to litigate this case on the merits, they provide no reason for their delay. They did not participate pursuant to Rule 245(b) or request leave to participate out of time pursuant to Rule 245(c). Instead, they were content to let the TMP negotiate a resolution to the case, and only when they were unhappy with that resolution did they attempt to come forward.

Further, they have provided no reason to believe the TMP was neglecting the interests of the partners to the benefit of the TMP, or that the TMP otherwise breached its fiduciary duty to the partnership. The TMP reached an agreement with respondent to settle this case, with both parties making concessions. The settlement does not result in a better or worse position for one or more partners as compared to one

or more other partners. All the partners will bear the result of the settlement in proportion to their ownership interests.

Therefore, the Court holds that the Objecting Nonparticipating Partners have not made a substantial showing as to why they should be permitted to participate pursuant to Rule 248(b)(4). The Court will deny the Amended Motions filed by the Objecting Nonparticipating Partners.

The Court has 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.*

