165 T.C. 95–171

UNITED STATES TAX COURT

REPORTS

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October 1, 2025, to

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UNITED STATES TAX COURT

WASHINGTON, D.C.

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OCTOBER TABLE OF CASES

THE DAVID AND BARBARA GREEN 1993 DYNASTY TRUST, MART D. GREEN, TRUSTEE, ET AL.,[1] PETITIONERS *v.* COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Docket Nos. 19631-19, 19632-19, 19633-19, 19634-19, 19635-19.

Filed October 2, 2025.

Ps are electing small business trusts and individuals who own shares of S, an S corporation. S's 2011 and 2012 federal income tax returns claimed charitable contribution deductions for donations of numerous artifacts. Each return included Form 8283, Noncash Charitable Contributions, which had been prepared by S. Each Form 8283 included a description of the group of contributed artifacts and reported an aggregate basis and fair market value and a range of acquisition dates for the group. Each return also included portions of an appraisal report describing and valuing each artifact. S used the services of an accounting firm to review each return before filing. Each P deducted, on its 2011 and 2012 federal income tax returns, its pro rata share of the fair market value of the artifacts reported

[1] The following cases are consolidated herewith: Green Stewardship Trust f.k.a. Green Management Trust and Green Family Management Trust, David M. Green, Barbara A. Green, Steven T. Green, Mart D. Green, and Darsee Lett, Co-Trustees, Docket No. 19632-19; Green Family Delta Trust, Steven T. Green and Mart D. Green, Co-Trustees, Docket No. 19633-19; Mart D. Green and Diana K. Green, Docket No. 19634-19; and Steven T. Green and Jackie D. Green, Docket No. 19635-19.

on S's information return for the same year. R disallowed all the deductions in Notices of Deficiency issued to each P and determined against each P a gross valuation misstatement penalty under I.R.C. § 6662(a) and (h) or, in the alternative, a substantial valuation misstatement penalty under I.R.C. § 6662(a) and (b)(3). The parties filed Cross-Motions for Partial Summary Judgment pertaining to (1) certain substantiation issues under I.R.C. § 170 and (2) the rules governing charitable contribution deductions for trusts under I.R.C. §§ 641, 642, 681, 512, and 170. *Held*: Genuine issues of material fact exist as to the potential application of the reasonable cause defense under I.R.C. § 170(f)(11)(A)(ii)(II), and summary adjudication on the substantiation issues is not warranted. *Held, further*, neither side has demonstrated it is entitled to the rulings it seeks with respect to the rules governing charitable contribution deductions for trusts. *Held, further*, both R's Motions and Ps' Motions will be denied.

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

MARSHALL, *J.*, wrote a dissenting opinion, which GUIDER and JENKINS, *JJ.*, joined.

JENKINS, *J.*, wrote a dissenting opinion, which NEGA, WAY, and GUIDER, *JJ.*, joined in full, and which MARSHALL, *J.*, joined as to Parts I and III.

Kurt M. Rupert, *Michael A. Furlong*, *Judith Leslie LaReau*, *Charles E. Geister III*, and *Len Burford Cason*, for petitioners.

Vassiliki Economides Farrior, *Kristen I. Nygren*, *William F. Castor*, *Daniel J. Lavassar*, *Henry C. Bonney*, and *Naseem Jehan Khan*, for respondent in docket No. 19631-19.

Vassiliki Economides Farrior, *Kristen I. Nygren*, *William F. Castor*, *Daniel J. Lavassar*, and *Henry C. Bonney*, for respondent in docket Nos. 19632-19, 19633-19, 19634-19, and 19635-19.

OPINION

TORO, *Judge*: Now before the Court in these deficiency cases are two sets of Cross-Motions for Partial Summary Judgment. As we explain below, we will deny each Motion.

Background

We derive the following background from the Stipulations of Facts with accompanying Exhibits, which are incorporated by reference, and the Motion papers. The background is set

forth solely to rule on the Motions and not as findings of fact for these cases. *See Sundstrand Corp. v. Commissioner*, 98 T.C. 518, 520 (1992), *aff'd*, 17 F.3d 965 (7th Cir. 1994). The parties have stipulated that the U.S. Court of Appeals for the Tenth Circuit is the appellate venue for these cases. *See* I.R.C. § 7482(b)(2).[2]

I. *Ownership of Hobby Lobby Stores, Inc.*

These cases involve three electing small business trusts[3]—the David and Barbara Green 1993 Dynasty Trust, the Green Stewardship Trust, and the Green Family Delta Trust (together, Trusts)—and two married couples—Mart D. and Diana K. Green as well as Steven T. and Jackie D. Green—who own shares of Hobby Lobby Stores, Inc. (Hobby Lobby). Hobby Lobby, an arts and crafts retailer, is an S corporation within the meaning of section 1361.[4]

The Trusts and the Greens owned more than 99% of Hobby Lobby during the 2011 and 2012 tax years (years at issue). The following chart shows their respective shares of ownership.

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[2] 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. Monetary amounts are rounded to the nearest dollar.

[3] In tax parlance, electing small business trusts are commonly referred to as "ESBTs," and we follow that convention for convenience.

[4] Subchapter S of chapter 1 of the Code governs the tax treatment of S corporations. Although subchapter S generally restricts an S corporation's shareholders to individuals, it allows certain types of trusts to hold S corporation shares, including ESBTs and trusts treated under subchapter J, part I, subpart E, as wholly owned by individuals who are citizens or residents of the United States. *See* I.R.C. § 1361(b)(1)(B), (c)(2)(A)(i), (v).

Shareholder	*Percentage Ownership*
The David and Barbara Green 1993 Dynasty Trust	88.2267%
The Green Stewardship Trust	0.1392%
The Green Family Delta Trust	8.1839%
Mart D. and Diana K. Green (through the Mart D. Green Succession Trust)	1.0323%
Steven T. and Jackie D. Green (through the Steven T. Green Succession Trust)	2.0654%
Nonparty	0.3525%
Total	100%

II. *The Donations and Relevant Tax Returns*

In the years at issue, Hobby Lobby donated to the Museum of the Bible, Inc. (Museum), a section 501(c)(3) organization, more than 1,200 Hebrew biblical scrolls, biblical manuscripts in Hebrew, Greek, Latin, and Aramaic, and printed books and Bibles dating between 1455 and 1782.[5] For convenience, we will refer to the property donated to the Museum as the Contributed Artifacts.

On its income tax returns for those years, Hobby Lobby claimed noncash charitable contribution deductions of $23,038,000 and $61,633,000 with respect to the Contributed Artifacts.[6] Consistent with the rules governing S corporations and their shareholders, the Trusts and the Greens reported their ratable shares of the deductions on their federal income tax returns.[7]

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[5] Gifts by an S corporation to a section 501(c)(3) organization may be charitable contributions within the meaning of section 170(c) that are deductible to the shareholders of the S corporation under section 170(a) or section 642(c)(1).

[6] An S corporation reports items, including deductions, to its shareholders and the Internal Revenue Service (IRS) 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).

[7] The Trusts claimed their own shares of the deductions, and the Greens claimed successor trusts' shares of the deductions. Each deducted the product of its Hobby Lobby ownership percentage and Hobby Lobby's total claimed charitable contribution deduction. The total claimed deduction was based on the appraised fair market value of the Contributed Artifacts that Hobby Lobby reported.

A. *Hobby Lobby's Form 8283 for Taxable Year 2011*

Hobby Lobby attached Form 8283, Noncash Charitable Contributions (Rev. December 2006), to its 2011 Form 1120–S. Hobby Lobby used the services of accounting firm Grant Thornton LLP to review its work papers and Form 1120–S, including the Form 8283, before the return's filing.

Hobby Lobby reported on the Form 8283 that it contributed to the Museum "431 Manuscript Hebrew Biblical Scrolls: Medieval, Renaissance, Enlightenment, & modern: 15th Century to 20th Century. Europe, Africa, and Middle East." Doc. 23, Ex. 99-J. On the same form, Hobby Lobby reported that it purchased the Contributed Artifacts between December 2009 and September 2010, that they had an aggregate basis of $1,753,432 and an aggregate appraised fair market value of $23,038,000 at the time of the contribution, and that they were contributed on December 30, 2011.

Hobby Lobby also attached to the 2011 Form 1120–S, sections of an appraisal report by Lee Raffaele Biondi of Biondi Rare Books and Manuscripts, which described and valued each scroll as of December 30, 2011.[8] The appraisal report indicated that the value per item ranged from $1,000 to $295,000. It did not identify, however, the acquisition date or basis for the individual scrolls. Mr. Biondi signed the Form 8283 declaration of appraiser on or about July 31, 2012.

B. *Hobby Lobby's Form 8283 for Taxable Year 2012*

Hobby Lobby attached Form 8283 (Rev. December 2012) to its 2012 Form 1120–S. As it did for 2011, Hobby Lobby used the services of Grant Thornton to review its work papers and Form 1120–S, including the Form 8283, before the return's filing.

Hobby Lobby reported on the Form 8283 that it contributed "[o]ver 800 Ancient & Medieval Biblical Manuscripts in Hebrew, Greek, Latin, and Aramaic, and printed books and Bibles (1455-1782)." Doc. 23, Ex. 101-J. Hobby Lobby also reported that it purchased the Contributed Artifacts from December 2008 to August 2011, that they had an aggregate

[8] Specifically, Hobby Lobby excluded sections 4, 5, and 6 of the appraisal report. Those sections included background information on Sefer Torah scrolls, regional histories of Jewish cultural centers, and the Hebrew Alphabet, respectively.

basis of $18,749,758 and an aggregate appraised fair market value of $61,633,000 at the time of the contribution, and that they were contributed on December 31, 2012.

As it had for 2011, Hobby Lobby attached sections of an appraisal report from Mr. Biondi to the information return that described and valued each artifact as of December 31, 2012.[9] The appraisal report set forth a wide value range for the items donated in 2012, with several items identified as having zero value while multiple others were valued in the millions of dollars, up to a high of $9,500,000.

In connection with the 2012 appraisal report, Mr. Biondi prepared a Uniform Standards of Professional Appraisal Practice certification, in which he explained that he had inspected some of the Contributed Artifacts "in the company of Michael Thompson and Carol Sandberg" of Michael R. Thompson Rare Books, Doc. 19, Ex. 44-J, at 33, and that Mr. Thompson and Ms. Sandberg had provided "personal property valuation assistance," *id.* at 35. Mr. Biondi further explained in the certification that "the Appraisal Report is solely mine—this is not a joint appraisal—and all information and valuation opinions herein are strictly my responsibility." *Id.* at 35. The valuations of several Contributed Artifacts in the report are accompanied, however, by a statement signed by Mr. Thompson and Ms. Sandberg that they "conclude and express [the] Fair Market Value" of the relevant artifact or that they "concur with Mr. Biondi's Fair Market Value opinion." The appraisal report describes the credentials of Mr. Biondi, Mr. Thompson, and Ms. Sandberg. Mr. Biondi signed the Form 8283 declaration of appraiser on or about August 15, 2013, but the return did not include a declaration of appraiser from Mr. Thompson or Ms. Sandberg.

C. *Grant Thornton Review of Hobby Lobby Returns*

In a Declaration submitted in connection with the Motions, Jeffrey Williams, Hobby Lobby's assistant vice president—tax, explains the following concerning the company's tax return preparation practices:

[9] Hobby Lobby omitted the same sections from the 2012 appraisal report as it had from the 2011 appraisal report.

> 7. During 2011 and 2012, HLSI used the services of Grant Thornton, LLP to review [Hobby Lobby's] work papers and federal tax returns prior to filing, and to file [Hobby Lobby's] federal tax returns.
>
> 8. If Grant Thornton had any questions, comments, or concerns regarding either the work papers or the federal returns, these were discussed with [Hobby Lobby], typically by telephone.
>
> 9. Once Grant Thornton finalized their review of the federal tax returns and work papers, [Hobby Lobby] would finalize preparation of all state tax returns, and the state tax returns and any additional work papers prepared were likewise delivered to Grant Thornton for review.
>
> 10. [Hobby Lobby] relied on Grant Thornton to raise any compliance issues regarding [Hobby Lobby's] 2011 and 2012 federal tax returns, including the Form 8283 appraisal summaries prior to filing.
>
> 11. No such issues were raised by Grant Thornton with respect to the 2011 and 2012 Form 8283 appraisal summaries.

Doc. 54, Ex. 1 (Declaration of Jeffrey Williams).

III. *IRS Examination and Petitions to This Court*

The Commissioner examined Hobby Lobby's returns for the years at issue and made adjustments. Eventually, the Commissioner issued Notices of Deficiency to the Trusts and the Greens in connection with those adjustments. The Notices of Deficiency determined that no deductions should be allowed with respect to the Contributed Artifacts because "[i]t has not been established that all the requirements of section 170 . . . have been satisfied."[10] The Notices also determined gross valuation misstatement penalties under section 6662(a), (b)(3), and (h) or, in the alternative, substantial valuation misstatement penalties under section 6662(a), (b)(3), and (e).

Petitions seeking redetermination of the deficiencies and penalties were timely filed in our Court. The cases were consolidated, and the Motions now before us followed in due course.[11]

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[10] In the alternative, the Commissioner determined that the Trusts and the Greens were entitled to reduced deductions, totaling $2,401,334 for 2011 and $18,683,572 for 2012, based on his view of the Contributed Artifacts' fair market values. The alternative values represent roughly 10% and 30% of the claimed deductions, respectively.

[11] In a separate opinion filed concurrently herewith, *Green 1993 Dynasty Trust v. Commissioner*, T.C. Memo. 2025-100, the Court addresses two other Motions relating to the penalties at issue.

IV. *The Parties' Motions*

A. *Cross-Motions on Substantiation Issues*

The Commissioner's first Motion asks us to hold that no deductions are allowed for the contributions Hobby Lobby made to the Museum because the Forms 8283 included in Hobby Lobby's returns contain several defects and "violate [the Deficit Reduction Act of 1984 (DEFRA), Pub. L. No. 98-369,] § 155(a)(1)(C)[, 98 Stat. 494, 691,] and the requirements prescribed by the Secretary [of the Treasury] in [certain] Treasury Regulations." Resp't's Mot. for Partial Summ. J. 1 (Doc. 42).

More specifically, the Commissioner takes the position that DEFRA § 155(a)(3), 98 Stat. at 691, and Treasury Regulation § 1.170A-13(c)(4)(ii) required Hobby Lobby to include the individual basis and date of acquisition of each of the Contributed Artifacts on its Forms 8283 for the years at issue. Because Hobby Lobby included only aggregate information, the Commissioner contends, its Forms 8283 were insufficient to substantiate its claimed deductions.

Moreover, with respect to the Form 8283 for 2012, the Commissioner maintains that two appraisers in addition to Mr. Biondi (Mr. Thompson and Ms. Sandberg) contributed to the appraisal report, but did not sign the Form 8283 as required by Treasury Regulation § 1.170A-13(c)(5)(iii). The Commissioner also observes that, if the Motion is granted, trial will still be necessary on valuation issues related to the determined penalties.

The Trusts' and the Greens' responses to the Commissioner's arguments fall into four main categories. The first is that they strictly complied with the applicable substantiation rules. The second is that they substantially complied with those rules, relying in part on *Bond v. Commissioner*, 100 T.C. 32, 41–42 (1993) (holding that certain of the regulatory reporting requirements of Treasury Regulation § 1.170A-13(c) can be satisfied, in appropriate circumstances, by substantial, rather than literal, compliance). The third is that even if they did not comply with the rules, their noncompliance was attributable to reasonable cause on account of their reliance on the services of Grant Thornton and is thus protected by section 170(f)(11)(A)(ii)(II). And the fourth is that the

substantiation rules at issue did not apply to them, either because as S corporation shareholders their only obligation was to attach Hobby Lobby's Forms 8283 to their returns, or because, with respect to the Trusts only, neither DEFRA nor the related regulations apply to them.

The Trusts and the Greens appear to maintain that their arguments under the first, second, and fourth categories justify partial summary judgment in their favor on the substantiation issues. Their reasonable cause argument appears only to be defensive—that is, it may serve to defeat the Commissioner's Motion but would not justify partial summary judgment for the Trusts and the Greens.

The Commissioner disagrees with the Trusts and the Greens on all counts.

B. *Cross-Motions with Respect to the Trusts*

The Commissioner's second Motion offers an alternative rationale for fully disallowing the charitable contribution deductions the Trusts claimed. Specifically, the Commissioner seeks a ruling that the Trusts' shares of the noncash charitable contributions from Hobby Lobby that would otherwise be allowable under section 642(c) are fully disallowed by section 681 because they are entirely allocable to the Trusts' unrelated business income.

Alternatively, the Commissioner claims that, under the Tenth Circuit decision in *Green v. United States*, 880 F.3d 519 (10th Cir. 2018), the Trusts' deductions are limited to their shares of Hobby Lobby's adjusted bases in the Contributed Artifacts, rather than the fair market values.

With respect to the Commissioner's effort entirely to disallow their deductions, the Trusts retort that the Motion ignores applicable Treasury regulations and that those regulations clearly permit partial deductions for charitable contributions allocable to the Trusts' unrelated business income. They point specifically to Treasury Regulation § 1.681(a)-2(a) as support for their view.

As to the Commissioner's alternative argument, the Trusts maintain that the Tenth Circuit's decision is distinguishable because the deductions here are governed by section 641(c), which provides special rules for the taxation of ESBTs, rather than section 642(c). Based on the interplay among sections

641, 681, 512(b)(11), and 170, in their view, the deductions should be allowed at fair market values, but within the limits prescribed by section 170(b)(1)(A).

Discussion

I. *Partial Summary Judgment*

The purpose of summary judgment is to expedite litigation and avoid costly and unnecessary trials. *FPL Grp., Inc. & Subs. v. Commissioner*, 116 T.C. 73, 74 (2001). The Court may grant partial summary judgment when there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Rule 121(a)(1) and (2); *Elec. Arts, Inc. v. Commissioner*, 118 T.C. 226, 238 (2002); *see also Take v. Commissioner*, 82 T.C. 630, 633 (1984) (explaining that if both parties move for summary judgment or partial summary judgment, this rule applies to each motion), *aff'd*, 804 F.2d 553 (9th Cir. 1986). In considering the Motions, we construe factual materials and inferences drawn from them in the light most favorable to each nonmoving party. *See Sundstrand Corp.*, 98 T.C. at 520.

The party moving for summary judgment bears the burden of showing an absence of any dispute of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). If the burden of persuasion at trial would be on the nonmoving party, the movant may carry this burden by demonstrating to the Court that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim. *Id.*; *Tesone v. Empire Mktg. Strategies*, 942 F.3d 979, 994 (10th Cir. 2019). If the movant makes this showing, the burden shifts to the nonmovant to set forth specific facts showing there is a genuine dispute for trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986); *Tesone*, 942 F.3d at 994. The nonmoving party may not rest upon mere allegations or denials in its pleadings, but must set forth specific facts showing there is a dispute. Rule 121(d); *Sundstrand Corp.*, 98 T.C. at 520.

II. *Charitable Contribution Deductions*

A. *Overview of Governing Legal Framework*

Section 170(a)(1) allows as a deduction any charitable contribution made within the taxable year. If the taxpayer

makes a charitable contribution of property other than money, the amount of the contribution is generally equal to the fair market value of the property when contributed. Treas. Reg. § 1.170A-1(c)(1). "A charitable contribution shall be allowable as a deduction only if verified under regulations prescribed by the Secretary." I.R.C. § 170(a)(1).

Congress has been particularly interested in certain of the verification requirements for charitable contributions. For example, in 1984, in an off-Code provision in DEFRA § 155(a)(1) and (2), 98 Stat. at 691, Congress directed the Secretary to issue regulations under section 170(a)(1) "which require any individual, closely held corporation, or personal service corporation claiming a deduction under section 170" greater than $5,000 to "obtain a qualified appraisal for the property contributed," "attach an appraisal summary to the return on which such deduction is first claimed for such contribution," and "include on such return such additional information (including the cost basis and acquisition date of the contributed property) as the Secretary may prescribe in such regulations." DEFRA also directed that the regulations "require the taxpayer to retain any qualified appraisal," DEFRA § 155(a)(1) (flush language), but did not direct that the appraisals be attached to the relevant returns. In response to DEFRA's directive, the Secretary added paragraph (c) to Treasury Regulation § 1.170A-13.

Twenty years after DEFRA, Congress decided to codify and expand the concepts reflected in DEFRA and the regulations thereunder by adding paragraph (11) to section 170(f). *See, e.g.*, *Murphy v. Commissioner*, T.C. Memo. 2023-72, at *28 n.13 (citing American Jobs Creation Act of 2004 (AJCA), Pub. L. No. 108-357, § 883(a), 118 Stat. 1418, 1631); *Pankratz v. Commissioner*, T.C. Memo. 2021-26, at *20 (same); *Belair Woods, LLC v. Commissioner*, T.C. Memo. 2018-159, at *22 (same).

Section 170(f)(11)(A)(i) provides:

> In the case of an individual, partnership, or corporation, no deduction shall be allowed under subsection (a) for any contribution of property for which a deduction of more than $500 is claimed unless such person meets the requirements of subparagraphs (B), (C), and (D), as the case may be, with respect to such contribution.

Subparagraphs (B), (C), and (D) set out increasingly stringent substantiation rules based on the amount of the donation involved.

Subparagraph (B) governs "contributions of property for which a deduction of more than $500 is claimed." Its requirements are met "if the individual, partnership or corporation includes with the return for the taxable year in which the contribution is made a description of such property and such other information as the Secretary may require."[12] I.R.C. § 170(f)(11)(B).

Subparagraph (C) governs "contributions of property for which a deduction of more than $5,000 is claimed." Its requirements are met "if the individual, partnership, or corporation obtains a qualified appraisal of such property and attaches to the return for the taxable year in which such contribution is made such information regarding such property and such appraisal as the Secretary may require." I.R.C. § 170(f)(11)(C).

Subparagraph (D) governs "contributions of property for which a deduction of more than $500,000 is claimed." Its requirements are met "if the individual, partnership, or corporation attaches to the return for the taxable year a qualified appraisal of such property." I.R.C. § 170(f)(11)(D). Put another way, while DEFRA directed the Secretary to require taxpayers to obtain and keep qualified appraisals for contributions of more than $5,000, section 170(f)(11)(D) now requires that for contributions of more than $500,000 the qualified appraisal itself, not just a summary, must be attached to the return.

Two further subparagraphs of section 170(f)(11) merit a brief mention here. Subparagraph (F) provides that "[f]or purposes of determining thresholds under this paragraph [i.e., section 170(f)(11)], property and all similar items of property donated to 1 or more donees shall be treated as 1 property." I.R.C. § 170(f)(11)(F). Subparagraph (G) provides that, "[i]n the case of a partnership or S corporation, this paragraph shall be applied at the entity level, except that the deduction shall be denied at the partner or shareholder level." I.R.C. § 170(f)(11)(G).

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[12] The requirements of section 170(f)(11)(B) do not apply "to a C corporation which is not a personal service corporation or a closely held C corporation."

B. *New Statutory Reasonable Cause Defense*

The statutory changes brought about by the AJCA were not all bad news for taxpayers. While expanding the substantiation requirements, Congress also provided "an escape hatch." *Pankratz*, T.C. Memo. 2021-26, at *21. Section 170(f)(11)(A)(ii)(II) expressly provides that section 170(f)(11)(A)(i)—the rule denying the deduction on substantiation grounds—"shall not apply if it is shown that the failure to meet such requirements is due to reasonable cause and not to willful neglect."

We have previously described section 170(f)(11)(A)(ii)(II) as "a new statutory 'reasonable cause' defense for failure to comply with the regulatory reporting requirements." *Belair Woods*, T.C. Memo. 2018-159, at *22. "This statutory 'reasonable cause' defense is broader than the regulatory 'reasonable cause' defense" that the Secretary had promulgated in response to DEFRA. *Id.*

The regulatory "defense is limited to situations where the taxpayer has reasonable cause 'for being unable to provide the information required.'" *Id.* (quoting Treas. Reg. § 1.170A-13(c)(4)(iv)(C)(*1*)).

By contrast, the "formulation of the section 170(f)(11)(A)(ii)(II) defense—referring to the existence of 'reasonable cause' and the absence of 'willful neglect'—resembles that appearing in numerous Code provisions that impose penalties or additions to tax." *Id.* (citing I.R.C. §§ 6039G(c)(2), 6704(c)(1), 6652(f)–(j), 6709(c)). And we generally interpret Code provisions that use the same words to have the same meaning. *See id.* (citing *Elec. Arts, Inc.*, 118 T.C. at 241). "Thus, although the section 170(f)(11)(A)(ii)(II) 'reasonable cause' defense relieves the taxpayer from disallowance of a deduction rather than from imposition of a penalty, we have construed these defenses similarly." *Id.* at *23 (first citing *Alli v. Commissioner*, T.C. Memo. 2014-15, at *60; and then citing *Crimi v. Commissioner*, T.C. Memo. 2013-51, at *98–99).

"Reasonable cause requires that the taxpayer have exercised ordinary business care and prudence as to the challenged item. . . . Thus, the inquiry is inherently a fact-intensive one, and facts and circumstances must be judged on a case-by-case basis." *Crimi*, T.C. Memo. 2013-51, at *99 (first citing *United States v. Boyle*, 469 U.S. 241 (1985); and then citing *Rothman*

v. Commissioner, T.C. Memo. 2012-163, 103 T.C.M. (CCH) 1846, 1874 (2012)); *accord* Treas. Reg. § 1.6664-4(b)(1) ("The determination of whether a taxpayer acted with reasonable cause and in good faith is made on a case-by-case basis, taking into account all pertinent facts and circumstances."); *see also Grecian Magnesite Mining, Indus. & Shipping Co. v. Commissioner*, 149 T.C. 63, 94 (2017) (same), *aff'd*, 926 F.3d 819 (D.C. Cir. 2019).

A taxpayer's reliance on the advice of a professional, such as a certified public accountant, constitutes a valid defense if the taxpayer proves by a preponderance of the evidence that (1) the taxpayer reasonably believed the professional was a competent tax adviser with sufficient expertise to justify reliance; (2) the taxpayer provided necessary and accurate information to the adviser; and (3) the taxpayer actually relied in good faith on the professional's advice. *See, e.g.*, *Neonatology Assocs., P.A. v. Commissioner*, 115 T.C. 43, 98–99 (2000), *aff'd*, 299 F.3d 221 (3d Cir. 2002); *Crimi*, T.C. Memo. 2013-51, at *99; *Alli*, T.C. Memo. 2014-15, at *61.

III. *Resolution of the Motions*

A. *Cross-Motions on Substantiation Issues*

On the substantiation issues, we begin (and end) our analysis with the Trusts' and the Greens' invocation of the reasonable cause defense under section 170(f)(11)(A)(ii)(II).

As we have consistently explained, the defense provides an "escape hatch," *Pankratz*, T.C. Memo. 2021-26, at *21, from an otherwise "demanding regime," *Murphy*, T.C. Memo. 2023-72, at *25, for substantiating noncash charitable contributions, *see, e.g.*, *id.* at *37 ("[The taxpayers'] omission of their cost bases in the donated properties on Forms 8283 [would] be excused for reasonable cause, so that we will not disallow their charitable contribution deductions for failure to comply with the reporting requirements of section 170(f)(11) and Treasury Regulation § 1.170A-13(c)."); *Presley v. Commissioner*, T.C. Memo. 2018-171, at *64–70 (analyzing the requirements for reasonable cause and declining to find reasonable cause because the taxpayer did not follow the advice given), *aff'd*, 790 F. App'x 914 (10th Cir. 2019); *Chrem v. Commissioner*, T.C. Memo. 2018-164, at *16–25 (analyzing whether the defense applies and denying partial summary judgment);

Belair Woods, T.C. Memo. 2018-159, at *22–24 (denying in part partial summary judgment based on the possible application of reasonable cause); *Crimi*, T.C. Memo. 2013-51, at *102 ("[The taxpayers were] entitled to a deduction for the charitable contribution of the subject property even if [they] did not attach a qualified appraisal required under the Code and the regulations, because any failure to comply with the requirement is excused on the ground of reasonable cause.").

Application of the defense "relieves the taxpayer from disallowance of [the claimed charitable contribution] deduction." *Belair Woods*, T.C. Memo. 2018-159, at *23. Put another way, if the defense applies, the Trusts and the Greens would no longer have to worry about the substantiation requirements set out in subparagraphs (B), (C), and (D) of section 170(f)(11). Moreover, if the defense is available, the Court would not need to resolve whether the Forms 8283 for the years at issue complied with the relevant statutory and regulatory requirements, either strictly or substantially, or whether they were required to, mooting many of the thorny (and in part novel) legal issues reflected in the parties' Motion papers.

Whether the defense is available here is a factual question that requires a trial. As we have recognized, the reasonable cause inquiry under section 170(f)(11) "is inherently a fact-intensive one, and facts and circumstances must be judged on a case-by-case basis." *See Crimi*, T.C. Memo. 2013-51, at *99; *see also, e.g.*, *Boyle*, 469 U.S. at 249 n.8 ("Whether the elements that constitute 'reasonable cause' are *present* in a given situation is a question of fact . . . ."). An evaluation of whether the taxpayers "exercised ordinary business care and prudence as to the challenged item," *Crimi*, T.C. Memo. 2013-51, at *99, requires an understanding of the facts concerning the item. That evaluation cannot be made on the record now before us.

Moreover, where (as here) taxpayers claim to have relied on a professional, such as a certified public accountant, we must evaluate (among others) the expertise of the adviser, the information provided to the adviser, the taxpayers' views concerning the adviser's competence, and the taxpayers' reliance on the adviser's advice. *See, e.g.*, *Neonatology Assocs.*, 115 T.C. at 98–99. All of these are matters for trial. *See, e.g.*, *Belair Woods*, T.C. Memo. 2018-159, at *24 (noting that

reliance-on-professional defense is inherently fact-intensive and outlining questions for trial); *Chrem*, T.C. Memo. 2018-164, at *24–25 (same).

The Commissioner offers two principal arguments in opposition; neither carries the day. First, the Commissioner contends that "DEFRA does not contain a reasonable cause defense" and that, because the alleged defects in the Forms 8283 "are all elements required by Congress in DEFRA," reasonable cause gives the Trusts and the Greens no help. Resp't's Mem. in Supp. of Obj. to Mot. for Partial Summ. J. 34–35 (Doc. 62). As the analysis above shows, the Commissioner's view of the law on this point does not accord with either the Code or our precedent.

Second, according to the Commissioner, the evidence produced by the Trusts and the Greens does not support finding reasonable cause as a matter of law because (he claims) (a) Hobby Lobby did not rely on the advice of a professional and (b) Hobby Lobby did not provide necessary and accurate information to the tax professional. How the Commissioner can claim to know these facts at this stage of the proceedings is unclear. What is clear is that the Trusts and the Greens vigorously challenge the Commissioner's assertions. And they have submitted a Declaration from a Hobby Lobby executive to back their position up. *See* Background Part II.C above. Read in the light most favorable to them as nonmovants, *see Sundstrand Corp.*, 98 T.C. at 520; *see also Anderson*, 477 U.S. at 255, the Declaration plainly raises genuine issues of material fact,[13] *see also* Rule 121(e) (providing that a party may resist summary judgment by pointing out evidence that the party plans to offer through testimony at trial, which may

[13] For example, what Hobby Lobby told its Grant Thornton advisers; what those advisers did in response to Hobby Lobby's instructions; what materials those advisers reviewed; what views, if any, the Grant Thornton advisers held about the relevant statutory and regulatory provisions, the Forms 8283 in effect at the relevant times, and the instructions accompanying those forms; and what views the Grant Thornton advisers had about the sufficiency of the Forms 8283 that Hobby Lobby had prepared—especially as related to the basis of the Contributed Artifacts, the acquisition dates of the Contributed Artifacts, and the signature issues—are all questions whose answers would inform the decision whether a reasonable cause defense is available here.

not be available for consideration at the summary judgment stage).

In short, the possible availability of the reasonable cause defense precludes partial summary judgment in favor of the Commissioner on the substantiation issue. And, because trial will be required on this issue (as well as the open valuation issues that the Commissioner's own Motions highlight), we decline to decide summarily the remaining substantiation issues, which (depending on the outcome of trial) might not need to be decided at all. *See, e.g.*, *Chrem*, T.C. Memo. 2018-164, at *25 ("Barring settlement, these cases will need to go to trial on the assignment of income issue and on [the taxpayers'] entitlement to the 'reasonable cause' defense. Under these circumstances we deem it prudent, for two reasons, to deny in their entirety both pending motions for partial summary judgment. First, if [the taxpayers] prevail on the 'reasonable cause' defense, it will be unnecessary for us to decide whether they substantially complied with the appraisal reporting requirements. Second, there could be some factual overlap between the two sets of issues.").

B. *Cross-Motions with Respect to the Trusts*

As to the Motions related to the Trusts and the interplay among sections 641, 642, 681, 512(b)(11), and 170, after a careful review of the Motion papers, neither side has convinced us that it is clearly entitled to the rulings that it seeks. We therefore believe it prudent to defer resolving those issues until a full record for these cases is developed at trial and the matters concerning the substantiation issues are also resolved. *See Kroh v. Commissioner*, 98 T.C. 383, 390 (1992) (reviewed) ("Since the effect of granting a motion for summary judgment is to decide an issue against a party without allowing [it] an opportunity for trial, such action is a 'drastic remedy' to be used cautiously and sparingly after a consideration of the case reveals that the requirements for summary judgment have clearly been met." (quoting *Espinoza v. Commissioner*, 78 T.C. 412, 416 (1982))).

Conclusion

For the reasons set out above, the Cross-Motions for Partial Summary Judgment will be denied.

To reflect the foregoing,

An appropriate order will be issued.

Reviewed by the Court.

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

NEGA, MARSHALL, WAY, GUIDER, and JENKINS, *JJ.*, dissent.

MARSHALL, *J.*, with whom GUIDER and JENKINS, *JJ.*, join, dissenting: Rule 121(a) provides that the "Court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." The Court "shall"—not may.

The parties chose to postpone a scheduled trial session in favor of waiting for answers to their complicated questions of law. They filed Cross-Motions for Partial Summary Judgment pertaining to Hobby Lobby's compliance with the section 170(f)(11) and Treasury Regulation § 1.170A-13(c) substantiation requirements, ESBT petitioners' entitlement to deductions under sections 642(c) and 681(a), and the determined penalties. The six Motions, along with attached memoranda, replies, and other related filings, exceeded 1,000 pages. The parties also filed four Stipulations of Facts exceeding 10,000 pages.

On the basis of these extensive filings, the Court can decide multiple issues of law now. Doing so would shorten trial and offer the parties insights with which they could better explore settlement. Instead, the opinion of the Court provides no answers to the parties' questions of law and, after reviewing the thousands of pages filed, the Court disposes of only one substantive issue (i.e., penalty approval under section 6751(b)) in a separate, nonprecedential opinion, *Green 1993 Dynasty Trust v. Commissioner*, T.C. Memo. 2025-100, filed this date. As support for its decision to defer resolution of the substantive issues, the opinion of the Court concludes that "granting a motion for summary judgment is to decide an issue

against a party without allowing [it] an opportunity for trial, [and] such action is a 'drastic remedy' to be used cautiously and sparingly." *See* op. Ct. p. 111 (quoting *Kroh v. Commissioner*, 98 T.C. 383, 390 (1992)). When both parties contend that they are entitled to partial summary judgment because there is no dispute as to any material fact, I understand that to mean they are identifying questions of law—and I think it is a "drastic remedy," to the detriment of the parties, that the opinion of the Court declines to answer those questions.

JENKINS *J.*, with whom NEGA, WAY, and GUIDER, *JJ.*, join, and with whom MARSHALL, *J.*, joins as to Parts I and III, dissenting: The opinion of the Court concludes that summary judgment is not warranted because the existence of a triable issue with respect to the possible availability of a reasonable cause defense renders it imprudent to address the other issues presented by the parties in the Cross-Motions for Partial Summary Judgment considered (Motions). Although I would not grant any of the Motions in full, I respectfully disagree with the opinion of the Court to defer resolution of the purely legal issues presented and would grant some of the Motions in part as they relate to those issues.

I. *Purpose of Summary Judgment*

As the opinion of the Court notes, *see* op. Ct. p. 104, the purpose of summary judgment is to expedite litigation and avoid costly and unnecessary trials, *see FPL Grp., Inc. & Subs. v. Commissioner*, 116 T.C. 73, 74 (2001). In line with this purpose, "[p]artial adjudications . . . can be valuable devices for defining, narrowing, and focusing the issues to be litigated, thus conserving judicial resources." William W. Schwarzer, et al., *The Analysis and Decision of Summary Judgment Motions* (Fed. Jud. Ctr. 1991), *reprinted in* 139 F.R.D. 441, 496 (1992). Partial summary adjudication is appropriate if some but not all issues in the case may be decided as a matter of law, even though not all the issues in the case are disposed of. *See* Rule 121(a)(1); *Turner Broad. Sys., Inc. & Subs. v. Commissioner*, 111 T.C. 315, 323–24 (1998). Accordingly, partial summary judgment is appropriate to narrow the scope of issues for trial

and to resolve issues that may make a case more susceptible to settlement, potentially avoiding trial altogether and thus conserving economic and judicial resources.

Nevertheless, the opinion of the Court holds that because a finding of reasonable cause would negate the need to address some of the issues raised in the parties' Motions, the Court should reserve judgment on all of the issues, even those that are preconditions to the reasonable cause inquiry and those that are separate, purely legal issues on which reasonable cause has no bearing. This approach is particularly significant given that it leads the Court to sidestep all of the issues relating to the three electing small business trusts—the David and Barbara Green 1993 Dynasty Trust, the Green Stewardship Trust, and the Green Family Delta Trust (together, Trusts)—specifically, even though the Trusts collectively claimed more than 95% of the deductions at issue in these cases, giving those issues outsized importance.

II. *Motions Concerning Substantiation Issues*

Section 170(f)(11)(A)(ii)(II) excuses failure to comply with section 170(f)(11)(B), (C), and (D) if it is shown that the failure to meet the requisite substantiation requirements is due to reasonable cause and not to willful neglect. Because the section 170(f)(11) reasonable cause defense resembles the defense appearing in numerous other Code sections, the Court has construed the section 170(f)(11) defense in the same way the defense is construed in those other Code sections. *See Belair Woods, LLC v. Commissioner*, T.C. Memo. 2018-159, at *22–23 (first citing *Alli v. Commissioner*, T.C. Memo. 2014-15, at *60; and then citing *Crimi v. Commissioner*, T.C. Memo. 2013-51, at *98–99).

Notably, the opinion of the Court relies on *Belair Woods*, *Alli*, and *Crimi* to explain how the Court construes the section 170(f)(11) reasonable cause defense, *see* op. Ct. pp. 107–08, but ignores those cases in considering the interaction of the defense with the determination of strict or substantial compliance with the substantiation requirements. In all three cases, the Court first addressed the substantiation requirements by analyzing, even if not determining, whether the taxpayer strictly or substantially complied with those requirements, before turning to the reasonable cause defense. *See Belair*

Woods, LLC, T.C. Memo. 2018-159, at *11–24 (analyzing strict and substantial compliance before holding "that Belair did not comply, either strictly or substantially, with the regulatory reporting requirements" and then turning to the reasonable cause defense); *Alli*, T.C. Memo. 2014-15, at *51–63 (considering substantial compliance before holding that the taxpayers "did not substantially comply with the qualified appraisal and reporting regulations" and then turning to the reasonable cause defense); *cf. Crimi*, T.C. Memo. 2013-51, at *84–102 (declining to make a determination with respect to substantial compliance because it could be established that the taxpayer's noncompliance would be "excused on the ground of reasonable cause," but not before noting that "[w]e are doubtful the . . . appraisal was in substantial compliance; nonetheless, we express no opinion today as to whether the cited defects . . . would individually or cumulatively fail to substantially comply with the qualified appraisal regulation").

The opinion of the Court cites *Chrem v. Commissioner*, T.C. Memo. 2018-164, as consistent with the decision to not address the remaining issues raised in the Motions concerning substantiation issues, given the potential impact of a reasonable cause finding. It is true that *Chrem* similarly declined to weigh in on the issue of substantial compliance with the section 170(f)(11) substantiation requirements given the potential mooting effect of a possible reasonable cause finding. *Chrem*, T.C. Memo. 2018-164, at *25. However, *Chrem* is inapposite. As indicated in the opinion of the Court, *see* op. Ct. p. 111, the Court's decision in *Chrem* to deny the motions for partial summary judgment was based not only on the potential effect of a reasonable cause finding but also the fact that there could be factual overlap between the reasonable cause issue and the remaining issue on which the parties sought partial summary judgment, the applicability of the assignment of income doctrine. *Chrem*, T.C. Memo. 2018-164, at *25.[1]

[1] In *Chrem*, T.C. Memo. 2018-164, at *25–26, the Court explained that the taxpayers might contend that no appraisal was required because the value of the contributed stock was fixed. Because the Court would need to determine, after trial, whether the sale of the stock by the contributee following the stock contribution was sufficiently preordained for the assignment of income doctrine to apply to the contribution, it would also need to determine whether, consequently, the sale was sufficiently preordained to affect the treatment for purposes of section 170(f)(11) of the contribution.

By contrast, there is no potential factual overlap between the reasonable cause issue and the substantial compliance issue in these cases.[2] The questions raised by the parties about the applicability of the substantiation rules and whether they were strictly or substantially complied with are legal issues that may be answered by the Court without trial.[3] And, given that the answers to those questions could affect the parties' settlement considerations and therefore the necessity of trial, they should be answered before trial.

The absence of the second justification in *Chrem* for denying the motions for partial summary judgment is particularly significant given that the first justification supports ruling on the legal issues presented by the parties even more strongly than it supports focusing on reasonable cause. The application of the reasonable cause defense to section 170(f)(11)(A)(i) is relevant only if there has been a failure to comply with applicable substantiation requirements. § 170(f)(11)(A)(ii)(II). Accordingly, the Court has previously granted partial summary judgment regarding the substantiation issue while reserving judgment on the reasonable cause defense. *See, e.g.*, *Schweizer v. Commissioner*, T.C. Memo. 2022-102, at *5–6; *Belair Woods*, T.C. Memo. 2018-159, at *21–24. If, instead of putting the cart before the horse, the Court in this case were to similarly consider the statutory predicates for applicability of the reasonable cause defense, and if it were to find either that the substantiation rules do not apply with respect to petitioners or that petitioners strictly or substantially complied with the substantiation requirements, it would inherently be unnecessary for the Court to decide whether there was reasonable cause for noncompliance. Accordingly, the issues for trial would be narrowed, further expediting litigation.

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[2] In these cases, there is no dispute that the contributed property was a type of property with respect to which the section 170(f)(11) substantiation requirements apply.

[3] The issue of whether Mr. Thompson and Ms. Sandberg were appraisers whose signatures on the appraisals were required is an exception. However, that factual issue has no interaction with the factual issues underlying the reasonable cause defense determination; neither does it affect the remainder of the analysis concerning strict or substantial compliance, which is based on the face of the Forms 8283, Noncash Charitable Contributions, prepared by Hobby Lobby Stores, Inc. (Hobby Lobby).

The opinion of the Court explains various matters that the Court must evaluate if taxpayers claim to have relied on a professional, including "the taxpayers' reliance on the adviser's advice," *see* op. Ct. pp. 109–110, given that the advice is the crux of the defense. But of course, petitioners have made only a skeletal argument for reasonable cause, not even mentioning any facts necessary to determine whether there was advice, nor invoking Rule 121(e) to indicate that trial testimony will flesh them out.[4] Given the paucity of petitioners' reasonable cause argument, there is no reason to place resolution of the factual reasonable cause issue ahead of resolution of the statutorily preliminary and similarly potentially dispositive but purely legal issues concerning applicability of and compliance (strict or substantial) with the substantiation requirements.

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[4] Notably, petitioners claim reliance on Grant Thornton, LLP but neither provide an affidavit from Grant Thornton addressing its advice nor suggest that someone from Grant Thornton will testify to such advice, notwithstanding that this Court's caselaw finding reasonable cause based on reliance on an adviser generally involves adviser input. *Compare, e.g.*, *Patacsil v. Commissioner*, T.C. Memo. 2023-8, at *18–19, *and Kelly v. Commissioner*, T.C. Memo. 2021-76, at *49–51, *aff'd*, 139 F.4th 854 (9th Cir. 2025), *with Woodsum v. Commissioner*, 136 T.C. 585, 593 (2011).

The opinion of the Court outlines numerous topics on which Grant Thornton's input, if it were available, could be useful, *see* op. Ct. note 13, illustrating the potential scope of trial testimony that could potentially be rendered unnecessary by a ruling on the legal issues. However, I disagree with the opinion of the Court that the views of Grant Thornton, as opposed to the advice it provided, are relevant to the issue of reliance, and I believe that the opinion of the Court inappropriately muddles the substantial compliance analysis with the reasonable cause analysis in suggesting that they are.

For example, the opinion of the Court specifically mentions the instructions to the Form 8283, which petitioners have cited in support of their argument for strict or substantial compliance, even though those instructions do not modify the relevant statutory or regulatory provisions. *Cf. Carpenter v. United States*, 495 F.2d 175, 184 (5th Cir. 1974); *Adler v. Commissioner*, 330 F.2d 91, 93 (9th Cir. 1964), *aff'g* T.C. Memo. 1963-196; *Casa De La Jolla Park, Inc. v. Commissioner*, 94 T.C. 384, 396 (1990); *Green v. Commissioner*, 59 T.C. 456, 458 (1972); *Caterpillar Tractor Co. v. United States*, 589 F.2d 1040, 1043 (Ct. Cl. 1978). Nevertheless, if Hobby Lobby actually relied on those instructions in preparing its Form 8283, that could potentially bear on the issue of whether there was reasonable cause independent of any purported reliance on Grant Thornton. However, Grant Thornton's advice, rather than merely its views, is what is relevant to the reasonable cause arguments that petitioners have made thus far.

III. *Motions Concerning Trust-Specific Issues*

The opinion of the Court cursorily concludes that it is prudent to defer resolving the issues presented in the Motions concerning issues specific to the Trusts until after the full record is developed at trial. *See* op. Ct. p. 111. In support thereof, it cites *Kroh v. Commissioner*, 98 T.C. 383, 390 (1982), for the proposition that it is a "drastic remedy" to deny a party an opportunity for trial. However, the parties in these cases all argue that the determination of the amounts of the deductions for which the Trusts are eligible is an issue of law. Given that they therefore do not seem to be seeking a trial (except, under petitioners' view, with respect to valuation), it is difficult to see how ruling on the legal issues presented by the parties as they have requested would be a "drastic remedy."

The Court's Rules provide that summary judgment "shall" be granted if the movant shows there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law and that the Court should state the reasons for denying a motion. Rule 121(a)(2) and (3). Accordingly, the opinion of the Court reflects a determination that a condition for summary judgment is not satisfied but does not explain why the Court disagrees with all of the parties in that regard.[5] If the Court does believe that there is a genuine dispute of material fact, it would behoove the Court to make the parties aware of that in order to permit informed decision making with respect to and preparation for trial. And if the Court has determined that all of the parties are incorrect as a matter of law, it would likewise be appropriate to state as much for clarity.

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[5] A nonexhaustive list of reasons why the Court might not be convinced by either party is if the Court believes (1) petitioners are correct about both of their legal arguments, but the Trusts' deduction amounts are limited to bases in the contributed artifacts under Treasury Regulation § 1.641(c)-1, in which case the valuation issues to be addressed at trial will be irrelevant to the Trusts, (2) petitioners are correct about the Trusts' being entitled to partial deductions but not about *Green v. United States*, 880 F.3d 519 (10th Cir. 2018), with the same result, and/or (3) the Trusts' entitlement to deductions is subject to the substantiation requirements, such that the reasonable cause issue to be addressed at trial will be relevant to the Trusts.

IV. *Conclusion*

For the reasons discussed herein, I respectfully disagree with the refusal of the opinion of the Court to address any of the issues raised by the parties in the Motions other than reasonable cause. I agree with the opinion of the Court that there is a genuine dispute of material fact with respect to reasonable cause, even if just barely, and therefore agree that none of the Motions should be granted in full. However, because I would not deny all of the Motions in full, I dissent.

COMPUTER SCIENCES CORPORATION, PETITIONER *v.* COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Docket No. 4823-21. Filed October 6, 2025.

P is a U.S. corporation engaged in the information technology business. During 2012 and 2013 P implemented a series of restructuring steps that allegedly generated a capital loss of $651,200,000. P reported that loss on its 2013 Federal income tax return. R commenced an examination of P's return. R's agent recommended disallowance of the capital loss deduction and assertion of a 20% penalty for an underpayment due to a substantial understatement of income tax. *See* I.R.C. § 6662(a), (b)(2), (d)(1)(B). The agent's immediate supervisor approved the initial determination to assert this penalty. R subsequently issued P a 30-day letter and a Notice of Deficiency disallowing the capital loss deduction and determining a 20% penalty with respect to that adjustment. P timely petitioned this Court. The parties have filed Cross-Motions for Partial Summary Judgment seeking a ruling as to whether R complied with the requirements of I.R.C. § 6751(b)(1) by securing timely supervisory approval of the penalty. P contends that R did not engage in "reasoned decision making" under the Administrative Procedure Act (APA) because the agent's supervisor failed to consider whether P had a "reasonable basis" defense available to it, based on adequate disclosure of the relevant facts. *See* I.R.C. § 6662(d)(2)(B)(ii). P accordingly urges that the supervisor's approval of the penalty should be set aside as agency action that is "arbitrary, capricious, [or] an abuse of discretion" under 5 U.S.C. § 706(2)(A). *Held*: R satisfied the requirements of I.R.C. § 6751(b)(1) because R's agent secured written supervisory approval of the initial determination to assert the penalty before the 30-day letter and

the Notice of Deficiency were issued to P. *Held, further*, the APA provisions P cites do not apply to determinations made by this Court in the exercise of its deficiency jurisdiction under I.R.C. §§ 6213 and 6214(a), including determinations regarding R's compliance with I.R.C. § 6751(b)(1). *Held, further*, if the APA provisions P cites were deemed relevant here, a supervisor's approval of a penalty recommendation does not constitute "final agency action" subject to judicial review under 5 U.S.C. § 704. *Held, further*, if the supervisor's approval of a penalty were thought to constitute "final agency action," that action would not be subject to distinct judicial review under the APA because our review of R's compliance with I.R.C. § 6751(b)(1) in this deficiency case affords P an "adequate remedy in a court" within the meaning of 5 U.S.C. § 704. *Held, further*, assuming arguendo that the APA requirement of "reasoned decision making" applies to a supervisor's approval of a penalty under I.R.C. § 6751(b)(1), review of that question would be on the administrative record, and the examination case file shows that the agent's supervisor engaged in "reasoned decision making."

Vivek A. Patel, *Allen Duane Webber*, *Courtland L. Roberts*, *Eric M. Aberg*, *Joseph B. Judkins*, *Meerah Kim*, *Varuni Balasubramaniam*, *Joseph B. Ward*, and *Nicholas M. O'Brien*, for petitioner.

Emily J. Giometti, *Kaitlyn N. Griffith*, *Archana Ravindranath*, *M. Jeanne Peterson*, *Robert T. Bennett*, *Charles E. Buxbaum*, *Travis Vance*, *Angela B. Reynolds*, and *Christine S. Irwin*, for respondent.

OPINION

LAUBER, *Judge*: Computer Sciences Corp. (CSC or petitioner) timely filed a Federal income tax return for its fiscal year ending March 29, 2013 (FY2013). Upon examination of that return the Internal Revenue Service (IRS or respondent) determined a deficiency of $276,535,161 and an accuracy-related penalty of $45,584,000 for an underpayment due to a substantial understatement of income tax. The adjustment giving rise to the bulk of this deficiency was the disallowance of a $651,200,000 capital loss.

Currently before the Court are the parties' Cross-Motions for Partial Summary Judgment addressing the question whether the IRS complied with section 6751(b)(1)[1] by securing timely

[1] Unless otherwise indicated, statutory references are to the Internal Revenue Code, Title 26 U.S.C. (Code), in effect at all relevant times, regulation

supervisory approval of the penalty. Petitioner concedes that the examining agent's immediate supervisor timely signified his approval to assert the penalty by placing his signature on four distinct documents over a period of two months. But CSC insists that the supervisor did not engage in "reasoned decision making" under the Administrative Procedure Act (APA) because he failed to consider that petitioner might have a "reasonable basis" defense to the penalty, predicated on adequate disclosure. *See* § 6662(d)(2)(B)(ii). Petitioner urges that the supervisor's approval of the penalty should therefore be set aside as agency action that is "arbitrary, capricious, [or] an abuse of discretion" under 5 U.S.C. § 706(2). Concluding that respondent has the better side of this argument, we will grant his Motion for Partial Summary Judgment and deny petitioner's.

Background

The following facts are derived from the Pleadings, the parties' Motion papers, and the Declarations and Exhibits attached thereto. They are stated solely for the purpose of deciding the Cross-Motions and not as 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).

At all relevant times CSC was the U.S. parent of a group of corporations that joined in the filing of a consolidated Federal income tax return. *See* § 1501. CSC and its subsidiaries engaged in various aspects of the information technology business. CSC had its principal place of business in Virginia when the Petition was timely filed. Absent stipulation to the contrary, this case is appealable to the U.S. Court of Appeals for the Fourth Circuit. *See* § 7482(b)(1)(B).

During FY2013 CSC sold its credit services business and realized a large capital gain. With a view to offsetting this gain CSC engaged in "Project Trinity," a structured financing transaction. It involved two principal steps. First, CSC contributed stock of one wholly owned subsidiary—on which it had a large built-in loss—to another wholly owned subsidiary in exchange for three classes of securities, which CSC

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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.

characterized as "senior participating preferred stock," "junior preferred stock," and a senior note. Applying section 358(b), CSC allocated to the senior preferred stock the bulk of its basis in the stock thus contributed. Several days later, CSC sold the senior preferred stock and the note to the Bank of Tokyo-Mitsubishi UFJ for cash. When the dust settled, CSC allegedly recognized, on this sale of securities, a long-term capital loss of $651,200,000.

CSC timely filed Form 1120, U.S. Corporation Income Tax Return, for FY2013, reporting the capital loss. It attached to its return a Form 8886, Reportable Transaction Disclosure Statement, in which it allegedly disclosed all relevant facts affecting Project Trinity and the capital loss deduction.

The IRS selected CSC's FY2013 return for examination and assigned the case to Revenue Agent (RA) Steven Herrera in the Large Business & International Division. At that time Supervisory RA Richard Guastello served as Mr. Herrera's acting team manager and thus as his immediate supervisor. Mr. Guastello's immediate supervisor was Renee Bowers, the acting territory manager.

In March 2017, as the examination neared completion, RA Herrera proposed to disallow petitioner's capital loss deduction and to assert, with respect to that disallowance, a 20% penalty for an underpayment due to a substantial understatement of income tax. *See* § 6662(a), (b)(2), (d)(1)(B). His recommendation to this effect was set forth in a Form 5701, Notice of Proposed Adjustment (NOPA). RA Herrera has averred under penalties of perjury that he conducted the examination of petitioner's return and that he "made the initial determination" to assert this penalty.

On March 22, 2017, RA Herrera sent the draft NOPA to Mr. Guastello, his immediate supervisor. The NOPA proposed to assert, with respect to disallowance of the capital loss, a 20% accuracy-related penalty for an underpayment due to a substantial understatement of income tax. That same day, Mr. Guastello approved RA Herrera's recommendation to assert this penalty by affixing his digital signature on the NOPA using Adobe software.

RA Herrera promptly notified CSC that the IRS was considering the assertion of this penalty. On March 23, 2017, CSC representatives met with the examination team to express

their view that CSC had adequately disclosed the pertinent tax treatment and that there was a "reasonable basis" for such treatment. That same day RA Herrera prepared and sent to CSC a draft Information Document Request (IDR) seeking the company's position as to why this penalty should not be asserted. Rather than respond to this request, CSC asked that the draft IDR be withdrawn. On March 27, 2017, Ms. Bowers—Mr. Guastello's supervisor—affixed her signature to the NOPA, signifying her approval to assert the substantial understatement penalty.

On April 1, 2017, Mr. Guastello again approved RA Herrera's recommendation to assert this penalty by affixing his signature on a "Substantial Understatement Penalty" worksheet. This worksheet, which RA Herrera had filled out, sets forth a series of instructions to guide the RA through the penalty determination process. A signed copy of that worksheet is attached to Mr. Guastello's Declaration.

Step 6 of the worksheet asks whether Form 8275, Disclosure Statement, or Form 8275–R, Regulation Disclosure Statement, was attached to petitioner's FY2013 return. Having examined CSC's return, RA Herrera correctly answered "No" to that question. The worksheet accordingly directed him to skip Step 7—which asked, "Does the taxpayer have a reasonable basis for the tax treatment of the item?"—and "[g]o to Step 8."

Step 8 asks: "Does the taxpayer meet the reasonable cause exception?" To answer that question RA Herrera was directed to "[c]omplete the [attached] reasonable cause worksheet," which he did. On that worksheet he indicated that CSC had "claimed privilege on the tax opinion" it had received regarding Project Trinity, so that the tax opinion "cannot be relied upon in claiming the reasonable cause exception." RA Herrera accordingly marked the "No" box at Step 8, leading to the conclusion that "[t]he penalty applies."

Mr. Guastello signed this worksheet as "Team Manager" on April 1, 2017. He placed his signature in the section captioned "Managerial approval is required." He thereby indicated that he had "reviewed and approved" the substantial understatement penalty as set forth on the worksheet.

RA Herrera's case activity record recites that he and Mr. Guastello met again with petitioner's representatives on

April 7, 2017, "to discuss assessment of the IRC 6662(d) . . . penalty." During this meeting they appear to have addressed (among other things) the potential applicability of the penalty and the penalty defense CSC advanced. Mr. Guastello's handwritten notes from the meeting record CSC's argument that no penalty should apply because it had "flagged [the] issues," an apparent reference to the Form 8886 attached to its FY2013 return. On April 12, 2017, CSC made an additional submission to the examination team, arguing that no penalty should be asserted in the light of its tax return disclosures and IDR responses. On April 21, 2017, Mr. Guastello nevertheless approved—for a third time—RA Herrera's determination to assert the substantial understatement penalty by initialing his approval on a civil penalty leadsheet.

On May 15, 2017, the IRS sent petitioner Letter 950 (commonly called a "30-day letter"), signed by Mr. Guastello, RA Herrera's immediate supervisor. He attached to that letter Form 4549–A, Income Tax Examination Changes, which included the substantial understatement penalty. This document constituted the first formal communication to CSC that the IRS intended to assert this penalty.

Petitioner filed a Protest to the 30-day letter, seeking review by the IRS Independent Office of Appeals (Appeals). RA Herrera's case activity record shows that he spent dozens of hours between October 2017 and May 2018 working on a rebuttal to the penalty-related arguments petitioner advanced in its Protest. Appeals was ultimately unpersuaded by petitioner's arguments.

On February 16, 2021—almost four years after Mr. Guastello first approved the penalty—Appeals issued petitioner a Notice of Deficiency that determined a deficiency of $276,535,161 and a substantial understatement penalty of $45,584,000. Petitioner timely petitioned this Court seeking a redetermination of the deficiency and the penalty.[2]

On April 25, 2025, respondent filed a Motion for Partial Summary Judgment seeking a ruling that the IRS complied

[2] In the Notice of Deficiency the IRS also determined a 20% penalty for negligence or disregard of rules or regulations and/or valuation misstatement. *See* § 6662(b)(1), (3). In September 2023 respondent notified petitioner that he was conceding those penalties. We accordingly need not consider whether supervisory approval was secured for them.

with the requirements of section 6751(b)(1) by securing timely supervisory approval for the penalty. Petitioner filed a Response to the Motion on May 28, 2025, and the next day filed a Cross-Motion for Partial Summary Judgment. In these filings petitioner contends that the APA "applies to the prerequisite under section 6751(b) for supervisory approval and requires reasoned decisionmaking by the IRS supervisor in approving the determination of a penalty." Petitioner asserts that Mr. Guastello, RA Herrera's immediate supervisor, did not "meaningfully review" the penalty recommendation because he did not consider whether CSC might have a "reasonable basis" defense to the penalty. Petitioner urges that Mr. Guastello's approval should therefore be set aside under 5 U.S.C. § 706(2)(A) as agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."

Discussion

I. *Summary Judgment Standard*

The purpose of summary judgment is to expedite litigation and avoid costly, unnecessary, and time-consuming trials. *FPL Grp., Inc. & Subs. v. Commissioner*, 116 T.C. 73, 74 (2001). We may grant partial summary judgment regarding an issue as to which there is no genuine dispute of material fact and the movant is entitled to judgment as a matter of law. *See* Rule 121(a)(2); *Sundstrand Corp.*, 98 T.C. at 520. In deciding whether to grant summary judgment, we construe factual materials and inferences drawn from them in the light most favorable to the nonmoving party. *Sundstrand Corp.*, 98 T.C. at 520. However, where the moving party properly makes and supports a motion for summary judgment, "the nonmovant may not rest on the allegations or denials in that party's pleading" but must set forth specific facts, by affidavit or otherwise, showing that there is a genuine dispute for trial. Rule 121(d). We find no genuine dispute of material fact on the question addressed in this Opinion—whether the penalty, though timely approved by the RA's immediate supervisor,

should be set aside because of alleged noncompliance with the APA.[3]

II. *Analysis*

A. *The Statutory Requirements*

Section 6751(b)(1) provides that "[n]o penalty under this title shall be assessed unless the initial determination of such assessment is personally approved (in writing) by the immediate supervisor of the individual making such determination." In *Belair Woods, LLC v. Commissioner*, 154 T.C. 1, 14–15 (2020), we ruled that the "initial determination" of a penalty assessment is typically embodied in a letter by which the IRS formally notifies the taxpayer that it has made a definite decision to assert penalties. Supervisory approval need not be recorded on any particular form or document; the only requirement is a writing that manifests the immediate supervisor's intent to approve the penalty. *Tribune Media Co. v. Commissioner*, T.C. Memo. 2020-2, 119 T.C.M. (CCH) 1006, 1010–11.[4]

As previously stated, this case is presumptively appealable to the Fourth Circuit. That court has not squarely addressed the question of *when* supervisory approval must be secured.[5]

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[3] Petitioner contends in the alternative that it has established a "reasonable basis" defense to the penalty as a matter of law. *See* § 6662(d)(2)(B)(ii) (providing that no penalty applies if "the relevant facts affecting [an] item's tax treatment are adequately disclosed" and "there is a reasonable basis for the tax treatment of such item"). Finding a genuine dispute of material fact on this point, we will deny petitioner's Cross-Motion to the extent predicated on this alternative ground, but without prejudice to its ability to advance this defense at trial.

[4] Because CSC is a corporation, respondent has no burden of production to show compliance with section 6751(b)(1). *See Dynamo Holdings Ltd. P'ship v. Commissioner*, 150 T.C. 224, 231–32 (2018) (citing *NT, Inc. v. Commissioner*, 126 T.C. 191 (2006)). Petitioner is nevertheless entitled to assert noncompliance with the statute as a defense to the penalty. *See Dynamo Holdings*, 150 T.C. at 237.

[5] In *Brooks v. Commissioner*, 109 F.4th 205, 221 (4th Cir. 2024), *aff'g* T.C. Memo. 2022-122, the Fourth Circuit affirmed our Court's holding that the IRS had established compliance with section 6751(b)(1) by producing a "Civil Penalty Approval Form, which documented that an IRS manager had approved the [initial determination] of a penalty" against the taxpayers. But the Fourth Circuit in that case did not address in detail the statute's substantive requirements; it simply held that our Court did not abuse its

Other appellate courts have ruled that supervisory approval is timely if secured "before the assessment of the penalty or, if earlier, before the relevant supervisor loses discretion whether to approve the penalty assessment." *Laidlaw's Harley Davidson Sales, Inc. v. Commissioner*, 29 F.4th 1066, 1074 (9th Cir. 2022), *rev'g and remanding* 154 T.C. 68 (2020); *accord Swift v. Commissioner*, 144 F.4th 756 (5th Cir. 2025) (adopting formulation set forth in *Laidlaw's*), *aff'g* T.C. Memo. 2024-13; *Minemyer v. Commissioner*, Nos. 21-9006, et al., 2023 WL 314832, at *5 (10th Cir. Jan. 19, 2023), *aff'g in part, rev'g in part and remanding* T.C. Memo. 2020-99; *Chai v. Commissioner*, 851 F.3d 190, 220 (2d Cir. 2017) (concluding that supervisory approval must be obtained at a time when "the supervisor has the discretion to give or withhold it"), *aff'g in part, rev'g in part* T.C. Memo. 2015-42; *cf. Kroner v. Commissioner*, 48 F.4th 1272, 1278, 1279 n.1 (11th Cir. 2022) (treating supervisory approval as timely if secured before the penalty is assessed or before the relevant supervisor loses discretion whether to approve the penalty assessment), *rev'g in part* T.C. Memo. 2020-73.[6]

The record establishes that RA Herrera, who conducted the CSC return examination, made the "initial determination" to assert the section 6662 penalty. The record also establishes that Mr. Guastello was RA Herrera's "immediate supervisor" at all relevant times. Petitioner does not dispute either of these facts.

The record further establishes that Mr. Guastello approved, on four separate occasions, RA Herrera's initial determination to assert the penalty. He did so: (1) by affixing his electronic signature to the NOPA on March 22, 2017, using Adobe software, (2) by placing his signature on the "Substantial Understatement Penalty" worksheet on April 1, 2017, (3) by initialing

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discretion by admitting the Civil Penalty Approval Form into evidence. *See Brooks v. Commissioner*, 109 F.4th at 221–22.

[6] The Treasury Department recently issued regulations that are consistent with the consensus of the appellate courts discussed in the text. These regulations provide that, for penalties included in a notice of deficiency, section 6751(b)(1) is satisfied "if the immediate supervisor of the individual who first proposed the penalty personally approves the penalty in writing on or before the date the notice is mailed." Treas. Reg. § 301.6751(b)-1(c). This regulation is effective for all penalties assessed on or after December 23, 2024. *Id.* para. (f).

his approval on the civil penalty leadsheet on April 21, 2017, and (4) by signing the 30-day letter dated May 15, 2017. As noted above, supervisory approval may be shown by the signature of the revenue agent's manager on any form or document, including a 30-day letter. *See Belair Woods*, 154 T.C. at 14–15; *Tribune Media Co.*, 119 T.C.M. (CCH) at 1010–11.

The IRS first communicated to petitioner its intention to assert the penalty on May 15, 2017, when it mailed the 30-day letter with the enclosed examination report. As of that date—and as of the later date when the Notice of Deficiency was mailed—the IRS examination remained at a stage where Mr. Guastello had discretion to approve or disapprove the penalty recommendation. Therefore, under a reading of the appellate case law most favorable to petitioner, the IRS complied with section 6751(b)(1) because Mr. Guastello timely approved the substantial understatement penalty and did so in writing.

While not disputing the timeliness of Mr. Guastello's approval, petitioner contends that the "bare signatures of IRS employees" are insufficient to satisfy the statute's requirements. Although Mr. Guastello supplied written approval for RA Herrera's penalty recommendation four times—on four distinct documents—petitioner insists that Mr. Guastello did not conduct a "meaningful review." That is because Mr. Guastello assertedly failed "to evaluate, or even consider," the availability of a reasonable basis defense to CSC.

One definition of the verb "approve," petitioner says, is "to sanction officially" or "to give formal or official sanction." "In order to officially sanction the penalty determination," petitioner urges, "a supervisor's personal written approval . . . requires a reasoned decision regarding the facts of a particular taxpayer." And that supposedly requires the supervisor to provide a "narrative explanation" for his action.

Petitioner concedes that Tax Court precedent supplies no support for its argument. We have repeatedly "'decline[d] to read into section 6751(b)(1) the subtextual requirement' that respondent demonstrate the depth or comprehensiveness of the supervisor's review." *Belair Woods*, 154 T.C. at 17 (quoting *Raifman v. Commissioner*, T.C. Memo. 2018-101, 116 T.C.M. (CCH) 13, 28). Faced with assertions that IRS officers gave insufficient consideration to the matters before them, we have

ruled such lines of inquiry "immaterial and wholly irrelevant to ascertaining whether respondent complied with the written supervisory approval requirement." *Patel v. Commissioner*, T.C. Memo. 2020-133, 120 T.C.M. (CCH) 211, 214 (quoting *Raifman*, 116 T.C.M. (CCH) at 27–28); *see Estate of Morrissette v. Commissioner*, T.C. Memo. 2021-60, 121 T.C.M. (CCH) 1447, 1474.

Section 6751(b)(1) does not inquire into the time or effort the supervisor devotes to his task. Rather, as we have said before: "The written supervisory approval requirement . . . requires just that: written supervisory approval." *Pickens Decorative Stone, LLC v. Commissioner*, T.C. Memo. 2022-22, 123 T.C.M. (CCH) 1127, 1130 (quoting *Raifman*, 116 T.C.M. (CCH) at 28). We have consistently held that a manager's signature on a NOPA or penalty approval form—without more—is sufficient to satisfy the statutory requirements. *See Palmolive Bldg. Invs., LLC v. Commissioner*, 152 T.C. 75 (2019); *Green Valley Invs., LLC v. Commissioner*, T.C. Memo. 2025-15, at *35. And we have regularly decided section 6751(b)(1) questions on summary judgment on the basis of IRS records and declarations from relevant IRS officers. *See, e.g.*, *Sand Inv. Co. v. Commissioner*, 157 T.C. 136, 142 (2021); *Long Branch Land, LLC v. Commissioner*, T.C. Memo. 2022-2, 123 T.C.M. (CCH) 1008, 1009.

We find nothing in the statute to support petitioner's position. Section 6751 is captioned "Procedural requirements." Subsection (a) requires that notices sent to taxpayers include a computation of any penalty asserted. Subsection (b), captioned "Approval of assessment," requires that the initial determination of a penalty be "personally approved (in writing) by the immediate supervisor of the individual making such determination," unless the penalty is "automatically calculated through electronic means." *See* § 6751(b)(1), (2)(B).

Contrary to petitioner's view, we find no suggestion in this statute that the supervisor, when supplying his approval, must provide "a reasoned decision regarding the facts of [the] particular taxpayer." The statute requires only that the penalty be "personally approved" by the supervisor and that his approval be manifested "in writing." Petitioner itself defines "approve" as meaning "to give formal or official sanction." By affixing his signature on an official IRS document, accompanied by a

representation that he reviewed and approved RA Herrera's recommendation, Mr. Guastello "gave formal or official sanction" to the initial determination to assert the penalty. We thus reject today, as we have consistently rejected before, the argument that "signatures on a NOPA do not constitute supervisory approval within the meaning of section 6751(b)."

The current consensus of the appellate courts is that the statute also contains an implicit timing requirement: Supervisory approval must be secured "before the relevant supervisor loses discretion whether to approve" or disapprove the penalty. *Laidlaw's Harley Davidson Sales, Inc. v. Commissioner*, 29 F.4th at 1074; *see supra* p. 127. Once a supervisor has lost such discretion—e.g., after the taxpayer has been held liable for a penalty in a final judicial decision—the supervisor's "approval" of the penalty would be meaningless. The courts have accordingly held that supervisory approval must be meaningful from a temporal standpoint—i.e., that it not come so late as to be a vain act. No court has ever held that section 6751(b)(1) requires a supervisor to supply—in addition to timely written approval—any particular level of substantive review. *See Thompson v. Commissioner*, 155 T.C. 87, 93 (2020) (rejecting argument that penalty should not apply because an acting supervisor was supposedly incapable of engaging in "meaningful review").

B. *Petitioner's Arguments*

Petitioner invokes the APA in an effort to sidestep the judicial precedents discussed above. Specifically, it relies on 5 U.S.C. § 706(2)(A), which directs a reviewing court to "hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." CSC contends that the APA "applies to the prerequisite under section 6751(b) for supervisory approval and requires reasoned decisionmaking by the IRS supervisor in approving the determination of a penalty."

In advancing this argument petitioner focuses chiefly on one of the four approvals Mr. Guastello supplied for the penalty—namely his signature, dated April 1, 2017, on the "Substantial Understatement Penalty" worksheet. According to petitioner, this document shows the inadequacy of Mr. Guastello's review

by demonstrating that he paid insufficient attention to the possible availability of a reasonable basis defense.

Petitioner characterizes the worksheet (unflatteringly) as a "check-the-box exercise." As noted above, Step 6 of the worksheet asks whether one of two disclosure forms—Form 8275 or Form 8275–R—was attached to CSC's FY2013 return. Having examined that return, RA Herrera correctly answered "No" to that question. The worksheet accordingly directed him to skip Step 7, which concerned the reasonable basis defense, and "[g]o to Step 8."

In petitioner's view, this worksheet was "designed to categorically ignore any disclosure other than a disclosure made on Form 8275 or 8275–R." CSC contends that it can qualify for the reasonable basis defense because it disclosed its treatment of the Project Trinity transaction on Form 8886, which was attached to its return. Because the worksheet directed RA Herrera to skip Step 7—and thus to bypass the reasonable basis defense—petitioner urges that "IRS management failed to evaluate, or even consider, the adequacy of [CSC's] disclosure [on Form 8886] in determining whether a reasonable basis defense could preclude the application of the . . . penalty."

We reject petitioner's line of argument for four independently sufficient reasons. First, we are reviewing the propriety of the penalty in a deficiency case, and the APA's judicial review provisions do not apply to Tax Court deficiency proceedings. Second, a supervisor's approval to assert a penalty does not constitute "final agency action" reviewable under 5 U.S.C. §§ 704 and 706(2)(A). Third, if Mr. Guastello's approval were thought to constitute final agency action, it would not be subject to distinct judicial review under 5 U.S.C. § 704 because our review in this deficiency case affords petitioner an "adequate remedy in a court." Finally, if the APA's requirement of "reasoned decision making" were deemed to apply, review of that question would be on the administrative record, and the examination case file shows that Mr. Guastello satisfied this requirement.

1. *Inapplicability of APA to Deficiency Proceedings*

The APA's judicial review provisions do not apply to our review of the Commissioner's compliance with section

6751(b)(1). We undertake that review in the exercise of the jurisdiction granted us by sections 6213 and 6214(a) to "redetermine the correct amount of [a taxpayer's] deficiency." Although petitioner characterizes section 6751(b)(1) as "a standalone basis to invalidate penalties," no provision of the Code—or of any other statute—grants us jurisdiction to determine respondent's compliance with section 6751(b)(1) as an abstract, stand-alone, matter.

It is well established that the APA's judicial review provisions do not apply to deficiency proceedings in this Court. "Congress did not intend the general grant of review in the APA to duplicate existing procedures for review of agency action." *Bowen v. Massachusetts*, 487 U.S. 879, 903 (1988). The deficiency procedures now set forth in chapter 63, subchapter B of the Code long predated the APA's enactment. *See QinetiQ US Holdings, Inc. & Subs. v. Commissioner*, 845 F.3d 555, 560 (4th Cir. 2017), *aff'g* T.C. Memo. 2015-123; *Ax v. Commissioner*, 146 T.C. 153, 162–63 (2016). As a result, "the de novo review procedures provided by the Internal Revenue Code, rather than the judicial review procedures under the APA, govern judicial review of deficiency proceedings." *QinetiQ US Holdings, Inc. & Subs. v. Commissioner*, 845 F.3d at 560 n.3; *see O'Dwyer v. Commissioner*, 266 F.2d 575, 580 (4th Cir. 1959) ("[T]he Tax Court is not subject to the Administrative Procedure Act."), *aff'g* 28 T.C. 698 (1957).

Petitioner dismisses these judicial precedents as "stand[ing] for the unremarkable proposition that the APA's judicial review provisions do not replace the system for judicial review in a deficiency proceeding." CSC acknowledges that "[t]he deficiency itself is subject to de novo review." But it insists that "the APA still applies to judicial review of final agency action that *is separate from* the deficiency proceeding."

Contrary to petitioner's assertion, our review of respondent's compliance with section 6751(b)(1) is not "separate from the deficiency proceeding." Because penalties must be "assessed, collected, and paid in the same manner as taxes," § 6665, our jurisdiction to redetermine a deficiency requires us to determine the appropriateness of any penalty determined in the deficiency notice. In *Graev v. Commissioner* (*Graev III*), 149 T.C. 485, 493 (2017), *supplementing and overruling in part* 147 T.C. 460 (2016), we held that the Commissioner generally

bears the burden of production regarding penalty approval because "compliance with section 6751(b) is properly at issue in [a] deficiency case."

Since *Graev III* we have consistently considered the Commissioner's compliance with section 6751(b)(1) in exercising our deficiency jurisdiction. We do so because the statute precludes "assessment" of a penalty absent supervisory approval, and no purpose would be served by upholding a penalty the Commissioner could not assess. The reason we are evaluating the IRS's compliance with section 6751(b)(1) in this case is that our deficiency jurisdiction requires us to redetermine penalties. Given petitioner's assignment of error to the IRS's determination of a substantial understatement penalty, satisfaction of the supervisory approval requirement is a necessary consideration in our decision whether to uphold that penalty. Simply put, our consideration of respondent's compliance with section 6751(b)(1) is *a part of*—not separate from—this deficiency case.

As petitioner observes, Congress enacted section 6751(b)(1) in 1998, more than 50 years after the APA was enacted. *See* Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, § 3306(a), 112 Stat. 685, 744. But this is of no moment: Section 6751(b)(1) did not establish a new *procedure* for our review of IRS action in a deficiency case, but simply added a novel requirement for the assessment of some penalties. The fact that a requirement relevant in redetermining a deficiency or penalty was enacted after the APA does not bring that portion of a deficiency case within the ambit of the APA's judicial review provisions. Nowadays many (if not most) of the Code provisions relevant to our redetermination of deficiencies and penalties were enacted after the APA became law. The important point is that the *procedures* under which we exercise our deficiency jurisdiction were established long before the APA was enacted.

Petitioner argues that "approval under section 6751(b) is a distinct statutory requirement—a fundamental prerequisite for the application of the penalty—that the Commissioner must satisfy irrespective of this Court's review of a notice of deficiency under section 6213." But petitioner is asking us to review respondent's compliance with that "distinct statutory requirement" in the exercise of our jurisdiction under sections

6213 and 6214(a). Even if the APA allowed stand-alone judicial review of the Commissioner's compliance with section 6751(b)(1)—which, for the reasons explained below, it does not—we would have no jurisdiction to conduct that species of APA judicial review in a deficiency proceeding such as this.[7]

2. *"Final Agency Action"*

Even if our review of respondent's compliance with section 6751(b)(1) could somehow be separated from our exercise of the deficiency jurisdiction petitioner has invoked, we would nonetheless conclude that the APA's judicial review provisions, including 5 U.S.C. § 706(2)(A), would not apply to that review. Those provisions apply to "[a]gency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court." 5 U.S.C. § 704. Petitioner cites no statute that specifically provides for review of a supervisor's grant of approval under section 6751(b)(1). And 5 U.S.C. § 704 does not itself provide for such review for two reasons, the first of which is that a supervisor's approval of a penalty is not "final agency action."

Petitioner contends that supervisory approval constitutes "final agency action" because it is "specific and discrete and therefore reviewable under the APA." As petitioner observes, a party challenging agency action "must . . . identify specific and discrete governmental conduct." *City of New York v. U.S. Dep't of Def.*, 913 F.3d 423, 431 (4th Cir. 2019); *see Norton v. S. Utah Wilderness All.* (*SUWA*), 542 U.S. 55, 64 (2004) (ruling that the "limitation to discrete agency action precludes . . . broad programmatic attack" on an agency's operations). We will assume that Mr. Guastello's approvals of RA Herrera's penalty recommendation could be characterized as "specific and discrete governmental conduct." For the APA to govern

[7] The question whether the IRS complied with section 6751(b)(1) can of course arise in other litigation scenarios. If a taxpayer challenged its underlying liability in a collection due process (CDP) case, and if it urged noncompliance with the supervisory approval requirement as a defense to a penalty, we would review that question in the exercise of our CDP jurisdiction under section 6330(c)(2)(B) and (d)(1). Or if a taxpayer urged noncompliance with the supervisory approval requirement as a defense to a penalty in a tax refund suit, the district court would review that question in the exercise of its refund jurisdiction under 28 U.S.C. § 1346(a)(1). In neither case would judicial review be exercised under the APA.

our review of that conduct, however, the action would have to be, not only specific and discrete, but also "final." 5 U.S.C. § 704; *SUWA*, 542 U.S. at 61–62 ("Where no other statute provides a private right of action, the 'agency action' complained of must be '*final* agency action.'").

Agency action is generally considered "final" if two conditions are met. *Bennett v. Spear*, 520 U.S. 154, 177 (1997). "First, the action must mark the 'consummation' of the agency's decisionmaking process." *Id.* at 177–78 (quoting *Chi. & S. Air Lines, Inc. v. Waterman S.S. Corp.*, 333 U.S. 103, 113 (1948)). In other words, the action "must not be of a merely tentative or interlocutory nature." *Id.* at 178. "And second, the action must be one by which 'rights or obligations have been determined,' or from which 'legal consequences will flow.'" *Id.* (quoting *Port of Bos. Marine Terminal Ass'n v. Rederiaktiebolaget Transatlantic*, 400 U.S. 62, 71 (1970)). The Supreme Court suggested that legal consequences might flow from agency action if it "alter[s] the legal regime to which the agency action is subject." *Id.*

A supervisor's approval of a penalty recommendation satisfies neither of the *Bennett* conditions. First, the supervisor's placement of a signature on a penalty approval form does not represent the "consummation of the [IRS's] decisionmaking process" in any sense of the word. *Cf. id.* Following supervisory approval of a penalty, the examination team may offer the taxpayer the opportunity to provide additional information regarding penalty defenses. After receiving that information, the examination team may elect to drop or reduce the penalty, or it may decide to assert alternative penalties for which it has stronger support. If the examination team adheres to a particular penalty in the 30-day letter, the taxpayer may seek review by Appeals. After evaluating the hazards of litigation, Appeals may drop or reduce the penalty as part of an overall settlement. In short, following an IRS examination of a taxpayer's return, the "consummation of the agency's decisionmaking process" is reflected in the notice of deficiency. That notice sets forth the penalty the IRS has finally determined to be applicable. Supervisory approval is just one step along the way: While it is a necessary condition for the ultimate determination of a penalty, it is by no means sufficient.

The facts of this case illustrate the "interlocutory nature" of supervisory approval. *See id.* Mr. Guastello first approved assertion of the substantial understatement penalty on March 22, 2017. The following day, CSC representatives met with the examination team to express their view that CSC had adequately disclosed the relevant facts and that there was "a reasonable basis" for its treatment. RA Herrera then sent petitioner a draft IDR seeking the company's position as to why the penalty should not be asserted.

After CSC asked that the IDR be withdrawn, Mr. Guastello approved the penalty a second time on April 1, 2017, by signing the "Substantial Understatement Penalty" worksheet. Notwithstanding that approval, RA Herrera and Mr. Guastello met with petitioner's representatives again on April 7, 2017, "to discuss assessment of the IRC 6662(d) . . . penalty." On April 12, 2017, CSC made an additional submission to the examination team, arguing that no penalty should be asserted in the light of its tax return disclosures and IDR responses. Having reviewed that submission, Mr. Guastello nevertheless approved assertion of the penalty for a third time on April 21, 2017, by initialing his approval on a civil penalty leadsheet.

On May 15, 2017, the IRS sent CSC a 30-day letter (signed by Mr. Guastello) that included the penalty. It filed a Protest seeking review by Appeals. RA Herrera's case activity record shows that he spent dozens of hours between October 2017 and May 2018 working on a rebuttal to the penalty-related arguments petitioner advanced in its Protest.

Appeals was ultimately unconvinced by petitioner's arguments. On February 16, 2021—almost four years after Mr. Guastello first approved the penalty—Appeals issued petitioner a Notice of Deficiency determining various deficiencies and (for FY2013) a substantial understatement penalty of $45,584,000. The decision by Appeals to include the penalty in the Notice of Deficiency was the "consummation of the agency's decision making process" with respect to the penalty. *Bennett*, 520 U.S. at 178. That action necessarily reflected a decision that was separate from—and subsequent to—Mr. Guastello's decision to approve the penalty in March 2017.

Our conclusion that supervisory approval of a penalty does not meet the first *Bennett* condition suffices to establish that it is not "final agency action" within the meaning of 5 U.S.C.

§ 704. But supervisory approval also fails the second *Bennett* condition because it is not an act "by which rights or obligations have been determined, or from which legal consequences will flow." *Bennett*, 520 U.S. at 178 (original quotation marks omitted).

Petitioner contends that "section 6751(b) approval directly affects a taxpayer's liabilities and obligations." That is supposedly so because "[a] proper approval permits the formal assessment of penalties," whereas "the lack of proper approval prevents" assessment. Petitioner's argument on the latter point appears to be that Mr. Guastello's approval had "legal consequences" because it denied petitioner the safe harbor it would supposedly have enjoyed if Mr. Guastello had *not* approved the penalty.

We are not persuaded. First, a supervisor's approval of a penalty, by itself, does not determine any *obligations* of the taxpayer because it does not make assessment of the penalty a foregone conclusion. It is not enough that supervisory approval might (in petitioner's words) "affect" a taxpayer's obligations. To satisfy the second *Bennett* condition, the agency action must *determine* liabilities or obligations. *Bennett*, 520 U.S. at 178. The challenged act must have "an immediate and practical impact." *City of New York*, 913 F.3d at 431 (quoting *Golden & Zimmerman LLC v. Domenech*, 599 F.3d 426, 433 (4th Cir. 2010)).

Mr. Guastello's approval of the penalty had no immediate and practical impact and did not *determine* any obligation of CSC. Between the supervisor's action and the ultimate issuance of a deficiency notice, many events may occur that will result in a penalty's being eliminated or reduced. *See supra* p. 135. A supervisor's approval of an initial determination to assess a penalty does not establish the taxpayer's liability for the penalty. Supervisory approval is but a step in a larger process that may or may not result in a penalty determination. Nor did Mr. Guastello's approval "alter the legal regime to which the agency action is subject." *Bennett*, 520 U.S. at 178. His approval was a routine action involving penalties specific to this particular taxpayer, and it had no effect on the "legal regime" governing penalties.

Second, the absence of supervisory approval does not determine any *rights* of the taxpayer because it does not insulate

the taxpayer from a possible future penalty assessment. Had Mr. Guastello declined RA Herrera's initial request for approval, petitioner would not have had immunity from the penalty for any period. An initial refusal by Mr. Guastello to approve the penalty might have indicated that RA Herrera had not yet done enough to develop his case. After further development of the issue, Mr. Guastello might have granted his approval. An initial withholding of approval would not have foreclosed that possibility.

Even if Mr. Guastello had not signified his approval—and if the IRS in consequence had not determined a penalty in the Notice of Deficiency—petitioner would still have had no immunity from the penalty. An IRS Chief Counsel attorney could assert the very same penalty in the Answer to the Petition (or by way of amendment to Answer) so long as that attorney secured approval from *his or her* immediate supervisor. *See Chai v. Commissioner*, 851 F.3d at 220–21; *Koh v. Commissioner*, T.C. Memo. 2020-77; *see also* Treas. Reg. § 301.6751(b)-1(e)(4) (example 4). The fact that the Examination Division had not secured approval to assert the penalty would not foreclose that possibility.

In sum, Mr. Guastello's approval did not determine any rights or obligations of CSC. His approval did not dictate that a penalty would ultimately be asserted, nor would his failure to grant approval have prevented assertion of a penalty. If Mr. Guastello had withheld his approval, the IRS could have asserted the same penalty later in appropriate circumstances. His approval did not have the "legal consequence[]" of denying a safe harbor that would otherwise have been available to CSC or of "alter[ing] the legal regime to which [the IRS] is subject." *Bennett*, 520 U.S. at 178. For these reasons, and because supervisory approval of a penalty does not constitute the "consummation of the agency's decision making process," *ibid.*, Mr. Guastello's action did not constitute "final agency action" under 5 U.S.C. § 704.

3. *"Adequate Remedy" in Court*

Even if we regarded Mr. Guastello's approval of the penalty as "final agency action," that action would not be subject to APA judicial review because petitioner has an "adequate remedy" in this Court for any noncompliance with section

6751(b)(1). *See* 5 U.S.C. § 704 (authorizing judicial review of final agency action "for which there is no other adequate remedy in a court"). If we were to accept petitioner's argument—contrary to our precedents—that the "bare signatures of IRS employees" do not meet the requirements of section 6751(b)(1), we would likely hold that the IRS had failed to secure proper supervisory approval for the penalty and thus decline to sustain it. Because this deficiency proceeding affords CSC an adequate judicial remedy for the noncompliance it alleges, 5 U.S.C. § 704 would not authorize separate judicial review even if Mr. Guastello were thought to have engaged in "final agency action."

If petitioner were correct that Mr. Guastello's approval constituted "final agency action for which there [was] no other adequate remedy in a court," petitioner could have brought a separate lawsuit under the APA (necessarily in another court) to challenge Mr. Guastello's action. That petitioner did not do so suggests that it shares our view that this deficiency proceeding affords it an adequate judicial remedy for the noncompliance it alleges. It follows that 5 U.S.C. § 704 does not authorize judicial review—separate and apart from our deficiency jurisdiction—of respondent's compliance with the statute.[8]

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[8] Petitioner errs by citing in support of its position the Second Circuit's opinion in *Chai v. Commissioner*, 851 F.3d 190. That case had nothing to do with the APA: The Second Circuit did not discuss any provision of 5 U.S.C., much less the circumstances in which a party would be deemed to have an "adequate remedy in a court" within the meaning of 5 U.S.C. § 704. The Second Circuit in *Chai* focused on the proper interpretation of section 6751(b)(1)—specifically, the *time* when supervisory approval must be secured and the obligation of our Court in a deficiency case to decide whether approval was timely secured. Reasoning that supervisory approval would be meaningful only if obtained at a time when "the supervisor has the discretion to give or withhold it," the Second Circuit held that section 6751(b)(1) requires written supervisory approval "no later than the date the IRS issues the notice of deficiency (or files an answer or amended answer) asserting such penalty." *Chai v. Commissioner*, 851 F.3d at 220–21. As a corollary of that holding, the Second Circuit ruled that establishing compliance with section 6751(b)(1) is generally part of the Commissioner's burden of production in a deficiency case. *Chai v. Commissioner*, 851 F.3d at 221. Because the "written-approval requirement of § 6751(b)(1) is appropriately viewed as an element of a penalty claim," *id.* at 222, our Court in a deficiency case must consider—with respect to any penalty asserted—whether the IRS complied with the supervisory approval requirement. That is

4. *"Reasoned Decision Making"*

Petitioner contends that Mr. Guastello's approval of the penalty must be set aside under 5 U.S.C. § 706(2)(A) as agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." Although Mr. Guastello supplied his approval on four distinct documents over a period of two months, petitioner insists that his action did not satisfy the APA's requirement of "reasoned decision making." *Cf. Motor Vehicle Mfrs. Ass'n of U.S. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 52 (1983).

Petitioner acknowledges our precedents holding that the IRS need not "demonstrate the depth or comprehensiveness of the supervisor's review." *See Belair Woods*, 154 T.C. at 17. But CSC contends that Mr. Guastello's action "did not simply lack 'depth.'" In so contending it focuses on the approval he granted on April 1, 2017, when he affixed his signature on the "Substantial Understatement Penalty" worksheet. In petitioner's view, that action was "fundamentally defective because the [worksheet] prevented Exam (and, concomitantly, the relevant supervisor) from considering to any extent—in depth or otherwise—the adequacy of CSC's disclosure on the . . . Form 8886 and whether there was a reasonable basis" for its position.

Were we to conclude that the APA governed our review of Mr. Guastello's approval, that review would be predicated on the administrative record. *See Kasper v. Commissioner*, 150 T.C. 8, 14–15 (2018) ("The general rule under the Administrative Procedure Act . . . is that 'review of an agency decision is limited to the administrative record.'" (quoting *Wilson v. Commissioner*, 705 F.3d 980, 991 (9th Cir. 2013), *aff'g* T.C. Memo. 2010-134)). Because this is a deficiency case, there is of course no "administrative record" in a literal sense. But the parties have attached to their Motion papers the documents from the IRS examination file they believe relevant in deciding the section 6751(b)(1) question. Our review of these documents convinces us that Mr. Guastello *did engage*

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precisely what we are doing in this Opinion. The Second Circuit's analysis is perfectly consistent with our conclusion that this deficiency proceeding—if one were to adopt APA terminology—affords petitioner an "adequate remedy in a court."

in reasoned decision making because they show that he *did consider* the availability vel non of a reasonable basis defense.

To establish a reasonable basis defense, the taxpayer must demonstrate (among other things) that "the relevant facts affecting the item's tax treatment [were] adequately disclosed in the return or in a statement attached to the return." § 6662(d)(2)(B)(ii)(I). Treasury Regulation § 1.6662-4(f)(1) provides that "[d]isclosure is adequate with respect to an item . . . or a position on a return if the disclosure is made on a properly completed form attached to the return." The regulation specifies that this disclosure "must be made" on one of two Disclosure Statements: Form 8275 ("[i]n the case of an item or position other than one that is contrary to a regulation") or Form 8275–R ("in the case of a position contrary to a regulation"). *Id.*

Petitioner's FY2013 return did not include Form 8275 or Form 8275–R. Step 6 of the Substantial Understatement Penalty worksheet asked RA Herrera whether either of these Forms was attached to the return, and he correctly answered "No." The worksheet accordingly directed him to skip Step 7, which concerned the "reasonable basis" defense, and "[g]o to Step 8." This was not, as petitioner would have it, a mindless directive. It was a directive dictated by Treasury Regulation § 1.6662-4(f)(1), which specifies that a disclosure sufficient to qualify for the reasonable basis defense "must be made" on Form 8275 or Form 8275–R.

RA Herrera had no need to consider whether there was a reasonable basis for CSC's position because CSC did not disclose the relevant facts on Form 8275 or Form 8275–R, as the regulation requires. The regulation on its face foreclosed CSC's ability to urge a reasonable basis defense to the penalty. In considering whether that defense might be available to CSC, Mr. Guastello, like RA Herrera, needed to do no more than ascertain whether CSC's return included one of the Disclosure Forms specified in the regulation. Mr. Gaustello had no reason to second-guess RA Herrera's representation that the answer to that question was "No."

Petitioner asks us to hold that Treasury Regulation § 1.6662-4(f), which undergirds the instructions on the worksheet, "is contrary to law and invalid." Petitioner contends that the regulation "attempts to rewrite section 6662(d)(2)(B)(ii)(I)"

by requiring that disclosure be made on Form 8275 or Form 8275–R, whereas the statute provides that disclosure may be made "in the return or in a statement attached to the return."

Petitioner is perfectly free to advance this argument at trial or in posttrial briefs. But the argument has no relevance in deciding the question we face now. Whether or not petitioner is correct, it was not incumbent on Mr. Guastello to judge the validity of Treasury Regulation § 1.6662-4(f)(1). We have repeatedly held that IRS officers do not abuse their discretion by following guidance set forth in the Internal Revenue Manual and other IRS pronouncements. *See Burl v. Commissioner*, T.C. Memo. 2025-40, at *4; *Zienkowski v. Commissioner*, T.C. Memo. 2024-39, at *9; *Mack v. Commissioner*, T.C. Memo. 2018-54, 115 T.C.M. (CCH) 1264, 1266. It follows a fortiori that they do not abuse their discretion by following a Treasury regulation.[9]

In sum, Mr. Guastello could properly accept the regulation as valid authority when approving RA Herrera's penalty recommendation. Assuming arguendo that APA principles were deemed relevant here, we would accordingly find that Mr. Guastello engaged in "reasoned decision making" when he concluded that the reasonable basis defense was not available to CSC.[10]

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[9] Wholly apart from the worksheet discussed in the text, the examination file as a whole shows that Mr. Guastello considered CSC's possible penalty defenses. As explained in the NOPA proposing the penalty, CSC representatives met with the exam team on March 23, 2017, to express their view that CSC had adequately disclosed the pertinent tax treatment and that there was "a reasonable basis" for such treatment. Mr. Guastello's handwritten notes from the meeting record CSC's argument that no penalty should apply because it had "flagged [the] issues," an apparent reference to the Form 8886 attached to its FY2013 return. Mr. Guastello and RA Herrera met again with CSC's representatives on April 7, 2017, "to discuss assessment of the IRC 6662(d) . . . penalty." During this meeting they appear to have addressed once again the potential applicability of the penalty defenses CSC advanced. On April 12, 2017, CSC made an additional submission to the examination team, arguing that no penalty should be asserted in the light of its tax return disclosures and IDR responses. Having received all this information, Mr. Guastello nevertheless signified his approval of the penalty for a third time on April 21, 2017, by initialing the civil penalty leadsheet.

[10] Even if petitioner could prevail on all the arguments discussed in the text, it is not obvious that we would be required to set aside Mr. Guastello's approval of the penalty as "not in accordance with law." *See* 5 U.S.C.

C. *Conclusion*

Because respondent has demonstrated compliance with section 6751(b)(1), we will grant his Motion for Partial Summary Judgment and deny petitioner's.

To implement the foregoing,

An appropriate order will be issued.

NORTH WALL HOLDINGS, LLC, SCHULER INVESTMENTS, LLC, A PARTNER OTHER THAN THE TAX MATTERS PARTNER, PETITIONER *v*. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Docket No. 27773-21. Filed October 21, 2025.

R mailed a Notice of Final Partnership Administrative Adjustment (FPAA) to the tax matters partner (TMP) of PS, a limited liability company treated as a partnership for federal income tax purposes and subject to the TEFRA unified audit and litigation procedures. P, a notice partner, filed a Petition for readjustment of partnership items 168 days after R mailed the FPAA to the TMP. R moved to dismiss P's Petition for lack of jurisdiction. P objects. A TMP may file a petition for readjustment within 90 days of R's mailing of an FPAA to the TMP. I.R.C. § 6226(a). A partner or group of partners entitled to notice may file a petition within 60 days after the close of the 90-day TMP petition period. I.R.C. § 6226(b)(1); *see also* I.R.C. § 6231(a)(8) (defining "notice partner"), (11) (defining "5-percent group"). The text, context, and relevant historical treatment of the TEFRA petition period

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§ 706(2)(A). By electronically signing the NOPA, signing the penalty worksheet, initialing the civil penalty leadsheet, and signing the 30-day letter, Mr. Guastello did what section 6751(b)(1) (as we have interpreted it) required him to do. We have consistently held that a manager's signature on a NOPA or penalty approval form—without more—is sufficient to satisfy the statutory requirements. *See Palmolive Bldg. Invs.*, 152 T.C. at 86; *Estate of Glassman v. Commissioner*, T.C. Memo. 2024-51, at *6; *Green Valley Invs.*, T.C. Memo. 2025-15, at *35. No court has ever interpreted section 6751(b)(1) to require the supervisor to produce what petitioner calls a "narrative explanation" of his approval. In short, even if the APA's judicial review provisions applied to our review, Mr. Guastello signified his approval "in accordance with" section 6751(b)(1) as the courts have uniformly construed that provision.

establish that the period within which to file a petition is a jurisdictional limit. The text places the petition period within the jurisdictional grant. I.R.C. § 6226(b)(1), (f). In the context of the broader TEFRA provisions, allowing equitable tolling would render the TEFRA statutory scheme unworkable. Historically, courts have treated the TEFRA petition deadlines as jurisdictional, and Congress has amended TEFRA to specifically account for the effect of the petition deadlines' being jurisdictional. Even setting aside the jurisdictional question, the complex TEFRA statutory scheme indicates that Congress did not intend for the equitable tolling doctrine to apply to untimely TEFRA petitions. *Held*: P's Petition was untimely. *Held, further*, equitable tolling does not apply to hold open the prescribed periods set forth in I.R.C. § 6226(a) or (b) for filing a TEFRA petition.

BUCH, *J.*, wrote the opinion of the Court, which KERRIGAN, NEGA, PUGH, ASHFORD, COPELAND, GREAVES, WAY, ARBEIT, GUIDER, and JENKINS, *JJ.*, joined in full, and which URDA, *C.J.*, and JONES, TORO, and MARSHALL, *JJ.*, joined as to Part VI.

TORO, *J.*, wrote an opinion concurring in the result, which URDA, *C.J.*, and PUGH, *J.*, joined.

WEILER, *J.*, wrote an opinion concurring in the result.

LANDY and FUNG, *JJ.*, concurred in the result without opinion.

MARSHALL, *J.*, wrote an opinion concurring in part and dissenting in part.

Michael Todd Welty, *Andrew W. Steigleder*, *Kevin M. Johnson*, *Lyle B. Press*, *Macdonald A. Norman*, *Merima Mahmutbegovic*, and *David W. Foster*, for petitioner.

John H.S. Shoemaker, *David A. Lee*, *Joseph E. Nagy*, *Aaron E. Cook*, and *Tracie M. Knapp*, for respondent.

OPINION

BUCH, *Judge*: Before the Court is the Commissioner's Motion to Dismiss for Lack of Jurisdiction, in which the Commissioner asks us to dismiss the Petition filed by Schuler Investments, LLC (Schuler or petitioner), with respect to North Wall Holdings, LLC (North Wall). North Wall is treated as a partnership for federal tax purposes and is subject to the repealed TEFRA[1] unified audit and litigation procedures. The Commis-

[1] Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub. L. No. 97-248, §§ 401–407, 96 Stat. 324, 648–71. TEFRA enacted sections 6221–6234. TEFRA was repealed by the Bipartisan Budget Act of 2015 (BBA), Pub. L. No. 114-74, § 1101(a), (g), 129 Stat. 584, 625, 638. However, the BBA provisions generally apply to returns filed for partnership taxable

sioner argues that we lack jurisdiction because Schuler filed its Petition after the statutory deadline set forth in section 6226(b).[2] Relying on *Boechler, P.C. v. Commissioner*, 142 S. Ct. 1493 (2022), Schuler argues that the deadline within which to file a petition under section 6226(b) is not jurisdictional.

The Supreme Court has held that, in determining whether a deadline is jurisdictional, courts must look to the text, context, and relevant historical treatment of the provision at issue. The text of section 6226(b) places the petition deadline in the heart of the jurisdictional grant. Because the surrounding TEFRA provisions become unworkable if the petition deadline is not jurisdictional, the broader context indicates that the petition deadline is jurisdictional. And 40 years of court decisions and congressional amendments have consistently treated the TEFRA petition deadlines as jurisdictional. Further, the complex TEFRA statutory scheme and the disruptive consequences that would result from permitting tolling indicates that Congress did not intend for tolling to apply. Thus, we will grant the Commissioner's Motion to Dismiss.

Background

North Wall is an Alabama limited liability company with its principal place of business in Atlanta, Georgia. Schuler is a Georgia limited liability company and a partner[3] of North Wall. Schuler was a notice partner of North Wall for the tax year ending December 31, 2017.

On May 6, 2021, the Internal Revenue Service (IRS) mailed to North Wall's tax matters partner (TMP) a Notice of Final Partnership Administrative Adjustment (FPAA) disallowing a claimed noncash charitable contribution deduction of $45,800,000 for 2017 and determining the applicability of

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years beginning after December 31, 2017. BBA § 1101(g)(1), 129 Stat. at 638. Because the year before the Court precedes this date, TEFRA applies.

[2] Unless otherwise indicated, statutory references are to the Internal Revenue Code, Title 26 U.S.C. (Code or I.R.C.), in effect at all relevant times, and regulation references are to the *Code of Federal Regulations*, Title 26 (Treas. Reg.), in effect at all relevant times. More specifically, any references to sections 6221–6234 are references to the applicable TEFRA provisions.

[3] For TEFRA purposes, a partnership is any entity required to file a partnership return under section 6031(a), and a partner is any partner or any other person whose income tax liability is affected by taking into account partnership items. I.R.C. § 6231(a)(1) and (2).

penalties under sections 6662A and 6662(c)–(e) and (h).[4] The Commissioner sent both a notice addressed to a named TMP and a "generic" notice addressed to "Tax Matters Partner," to two different addresses.

On June 1, 2021, the Commissioner mailed copies of the FPAA to other partners, including Schuler. The copy appended to the Petition bears a heading with several items of information.[5] It is dated June 1, 2021. Below that date, it identifies the partnership and the year of adjustment, and it provides information for contacting the IRS. That heading ends by providing the date the FPAA was mailed to the TMP, stating: "Date FPAA mailed to tax matters partner: 05-06-2021." That same document includes a section with a bold heading, "If you don't agree with the adjustments," describing the process for filing a petition to challenge the Commissioner's adjustments. Under that heading it states: "If the TMP doesn't file a petition by the 90th day from the date we mailed the FPAA, any partner entitled to receive this letter, or any 5 percent group, can petition" various courts. The document continues: "The group or a partner must file the petition after the 90th day, but on or before the 150th day from the date we mailed the FPAA to the TMP."

North Wall's TMP did not file a petition challenging the FPAA within 90 days of the Commissioner's mailing of the FPAA or at any other time.

Schuler, in its capacity as a notice partner, filed its Petition on October 21, 2021. The Petition states: "The Internal Revenue Service located in Ogden, Utah issued an FPAA relating to the Partnership's 2017 taxable year on June 1, 2021." It makes no reference to the date the FPAA was mailed to the TMP. The Petition was electronically filed 168 days after

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[4] The Commissioner mailed two notices to the TMP. One was addressed to "Ornstein-Schuler, LLC, Tax Matters Partner, North Wall Holdings, LLC." The other was a "generic FPAA" mailed to "Tax Matters Partner, North Wall Holdings, LLC." A generic FPAA satisfies the TEFRA notice requirements and is sufficient to begin the running of the petition period under section 6226. *Chomp Assocs. v. Commissioner*, 91 T.C. 1069, 1074 (1988).

[5] The copy appended to the Petition in this case is not addressed to Schuler. The Commissioner provided a certified mail list showing an FPAA having been mailed to Schuler at the same address Schuler provided in its Petition. The parties do not dispute that the Commissioner mailed an FPAA to Schuler.

the FPAA was mailed to the TMP, i.e., 18 days after the expiration of the 150-day period referenced in the FPAA. But the Petition affirmatively alleges: "Petitioner is filing this Petition within the 150-day period set forth in Section 6226(b) in its capacity as a Notice Partner of North Wall." Schuler does not allege in its Petition that equitable tolling applies, and it does not allege facts in support of equitable tolling in any pleading.

The Commissioner timely answered and later filed a Motion to Dismiss for Lack of Jurisdiction on the ground that Schuler's Petition was untimely. Schuler objects, arguing that the deadline within which to file a petition from an FPAA is not jurisdictional.

Discussion

Partnerships are passthrough entities and, as such, are not responsible for paying federal income tax. I.R.C. § 701. Instead, the partners report their shares of items flowing from the partnership on their own income tax returns. *Id.* Although partnerships do not calculate and report an income tax liability, they are nonetheless required to file Form 1065, U.S. Return of Partnership Income. I.R.C. § 6031(a). On that return, a partnership generally reports the partnership's aggregate and each partner's share of items of income, gain, loss, deduction, and credit, along with other information. The partnership reports information with respect to the partners on Schedules K–1, Partner's Share of Income, Deductions, Credits, etc. Partnerships can have as few as two or as many as tens of thousands of partners.

Traditional deficiency procedures created difficulties with respect to examining partnership returns and assessing tax resulting from any adjustments that might result from an examination. Under traditional procedures, if the Commissioner determines a deficiency in tax, the Commissioner must mail a Notice of Deficiency to a taxpayer. *See* I.R.C. § 6212. But because a partnership does not have an income tax liability, it cannot have a deficiency in income tax, and the Commissioner cannot issue a Notice of Deficiency to the entity for income tax. Instead, absent a separate set of procedures, the Commissioner would be required to determine deficiencies in income tax partner by partner and mail a separate Notice of Deficiency to each partner. Some partners might petition the

Tax Court. *See* I.R.C. § 6213. Others might pay the tax, file a refund claim, and file a refund suit. *See* I.R.C. § 7422(a). And yet others might simply agree to the deficiency or default and allow assessment. Thus, in addition to the administrative burden, applying traditional deficiency procedures to partnerships could lead to inconsistent results.

I. *TEFRA Overview*

To address the many procedural issues that are unique to partnerships,[6] Congress enacted TEFRA's unified audit and litigation procedures in 1982 to alleviate the administrative burden caused by duplicative audits and litigation. *Samueli v. Commissioner*, 132 T.C. 336, 340 (2009). A goal of TEFRA was to "promote increased compliance and more efficient administration of the tax laws." H.R. Rep. No. 97-760, at 600 (1982) (Conf. Rep.), *as reprinted in* 1982-2 C.B. 600, 662.

Section 6221 provides that the tax treatment of all "partnership item[s]" is determined at the partnership level.[7] Rather than mail a Notice of Deficiency to each partner, once the Commissioner makes partnership-level determinations, he must mail an FPAA to the TMP. I.R.C. § 6223(a)(2). Within 60 days of mailing that notice, the Commissioner must also mail

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[6] Beyond those already described, there are myriad issues that create complications in the examination and litigation of income tax issues with respect to passthrough entities. These issues include, for example, identifying indirect partners in a tiered structure, *see* I.R.C. § 6231(a)(10), different partners' having different limitations periods, *see, e.g.*, I.R.C. § 6229; *Rhone-Poulenc Surfactants & Specialties L.P. v. Commissioner*, 114 T.C. 533 (2000), or the effect of bankruptcy of a partner or partnership on an ongoing tax dispute, *see 1983 W. Rsrv. Oil & Gas Co. v. Commissioner*, 95 T.C. 51, 57 (1990), *aff'd*, 995 F.2d 235 (9th Cir. 1993) (unpublished table decision); Treas. Reg. § 301.6231(c)-7.

[7] "Partnership item[s]" include "any item required to be taken into account for the partnership's taxable year under any provision of subtitle A to the extent regulations prescribed by the Secretary provide that, for purposes of this subtitle, such item is more appropriately determined at the partnership level than at the partner level." I.R.C. § 6231(a)(3). By regulation, the Commissioner defined partnership items to include not only items of income, gain, loss, deduction, and credit, such as those identified in section 702(a), but also myriad items that underlie the ultimate tax reporting of those items. *See* Treas. Reg. § 301.6231(a)(3)-1.

copies of the FPAA to each "notice partner" and "5-percent group."[8] I.R.C. §§ 6231(a)(8), (11), 6223(a), (b)(2), (d)(2).

Litigating the adjustments in an FPAA is coordinated so that all partners are consolidated into a single proceeding. The TMP may file a petition challenging the Commissioner's adjustments within 90 days. I.R.C. § 6226(a). And the TMP may file that petition with the Tax Court, the appropriate U.S. district court, or the Court of Federal Claims. *Id.* If the TMP files a petition within that 90-day period, then no other partner may file a petition. I.R.C. § 6226(b)(1); *Cablevision of Conn. v. Commissioner*, T.C. Memo. 1993-106. But if the TMP does not file a petition during that 90-day period, then any notice partner or 5-percent group may file a petition with any of those courts during the 60 days after the close of the 90-day period. I.R.C. § 6226(b)(1).

Once a court proceeding is brought, all partners are treated as parties to the action. I.R.C. § 6226(c). This includes both direct and indirect partners. I.R.C. § 6231(a)(2). In contrast, any person who no longer has an interest in the proceeding, such as a partner who has filed for bankruptcy, is not treated as a party. I.R.C. §§ 6226(d), 6231(b); *see, e.g.*, Treas. Reg. § 301.6231(c)-7. Absent one of the narrow exceptions applying, any person who was a partner in the partnership during the taxable year is treated as a party to the court proceeding and is bound by its outcome. I.R.C. § 6226(c)(1).

The act of filing a petition by any partner does more than initiate a court proceeding binding all partners. If a proceeding is initiated during either the 90- or 60-day petition period, the Commissioner is prohibited from assessing any tax that might result from his adjustments until that proceeding becomes final. I.R.C. § 6225(a). Likewise, certainty as to which

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[8] For partnerships with more than 100 partners, the Commissioner is required to mail direct notice only to partners holding at least a one percent interest. I.R.C. § 6223(b)(1). Partners entitled to direct notice from the Commissioner are "notice partner[s]." I.R.C. § 6231(a)(8). Other partners may opt to receive notice by forming a 5-percent notice group, and the Commissioner must provide direct notice to a designate of that group. I.R.C. §§ 6223(b)(2), 6231(a)(11). The TMP is required to notify any partner who is not otherwise entitled to direct notice from the Commissioner. Treas. Reg. § 301.6223(g)-1(a)(2). Any passthrough partner is required to provide notice to partners who own their interests indirectly through it. I.R.C. § 6223(h); Treas. Reg. § 301.6223(h)-1(a).

proceeding moves forward is consequential. If the proceeding that moves forward is one brought in U.S. district court or the Court of Federal Claims, the petitioning partner must make a jurisdictional deposit. I.R.C. § 6226(e). And the prohibition against assessment does not apply. *See* I.R.C. § 6225(a)(2) (restricting assessment only if a petition is filed in the Tax Court).

Once the TEFRA proceeding has concluded, the Commissioner may assess tax by making a computational adjustment. I.R.C. § 6231(a)(6). This requires that the Commissioner complete computations and make assessments for all partners within the period during which the statute of limitations is tolled by the issuance of the FPAA. *See* I.R.C. § 6229(d)(1) (tolling the period of limitation for the period during which a TEFRA petition may be filed and for one year thereafter). Although deficiency procedures generally do not apply to assessments following TEFRA proceedings, the Commissioner may be required to issue Notices of Deficiency to assess tax when further factual determinations are required at the partner level. I.R.C. § 6230(a)(2); *see also N.C.F. Energy Partners v. Commissioner*, 89 T.C. 741, 744 (1987).

II. *TEFRA Petition Deadlines*

Since its original enactment, the aforementioned TEFRA petition deadlines coordinated to resolve jurisdictional questions. For example, as TEFRA was originally enacted, if a notice partner filed a petition during the 90-day TMP petition period, that petition was "premature" and the Court lacked jurisdiction. *See, e.g.*, *Mishawaka Props. Co. v. Commissioner*, 100 T.C. 353, 362 (1993); *PAE Enters. v. Commissioner*, T.C. Memo. 1988-222. Congress amended section 6226 in 1997 to provide that premature petitions would be deemed to be filed on the last day of the 60-day filing period, but only if no other timely petition was filed. I.R.C. § 6226(b)(5); Taxpayer Relief Act of 1997, Pub. L. No. 105-34, § 1240(a), 111 Stat. 788, 1028–29. A similar issue arose with respect to petitions filed by TMPs after the close of the 90-day petition period that is exclusive to TMPs. In such a situation, the Court lacks jurisdiction under section 6226(a) (the TMP petition provision). The Court may nonetheless have jurisdiction under section 6226(b), but only if the TMP also meets the definition of a

notice partner. *Barbados #6 Ltd. v. Commissioner*, 85 T.C. 900 (1985).

Taken together, these petition deadlines coordinate to ensure that there is only one partnership-level proceeding and that, with limited exceptions, all partners are bound by that proceeding. As already discussed, if a TMP has filed a timely petition, no other petition may be filed. If no TMP petition is filed, any partner entitled to notice may file a petition in the Tax Court, the applicable U.S. district court, or the Court of Federal Claims during the subsequent 60 days. I.R.C. § 6226(b)(1). If a petition is filed in the Tax Court and another court, the Tax Court proceeding takes priority regardless of which petition was filed first. I.R.C. § 6226(b)(2). If multiple petitions are filed outside of the Tax Court, the first petition moves forward, and the others must be dismissed. I.R.C. § 6226(b)(3). If multiple petitions are filed in the Tax Court, the Court dismisses the latest in time. *See, e.g.*, *Comput. Programs Lambda, Ltd. v. Commissioner*, 89 T.C. 198, 207 (1987). In short, whenever multiple proceedings are initiated, every proceeding other than the one that takes priority "shall be dismissed." I.R.C. § 6226(b)(4).

III. *Jurisdictional Versus Claims Processing Rules*

If a federal court's subject-matter jurisdiction depends on the timely filing of a complaint or petition, "a litigant's failure to comply with the bar deprives a court of all authority to hear a case." *United States v. Wong*, 575 U.S. 402, 408–09 (2015). Courts must enforce the deadline sua sponte; the deadline cannot be tolled or waived; and there is no room for equitable exceptions to be made on account of the specific facts of a case. *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 514 (2006). Late-filed cases in such instances must be dismissed for lack of jurisdiction. *Id.*

Claims processing rules, on the other hand, are those that "seek to promote the orderly progress of litigation by requiring that the parties take certain procedural steps at certain specified times." *Henderson ex rel. Henderson v. Shinseki*, 562 U.S. 428, 435 (2011). The failure to meet a claims processing rule "do[es] not deprive a court of authority to hear a case." *Wong*, 575 U.S. at 410. "Filing deadlines . . . are quintessential claim-processing rules." *Henderson*, 562 U.S. at 435. They

"ordinarily are not jurisdictional." *Sebelius v. Auburn Reg'l Med. Ctr.*, 568 U.S. 145, 154 (2013). This is true "even when the time limit is important . . . and even when it is framed in mandatory terms." *Wong*, 575 U.S. at 410. Deadlines that are claim-processing rules are subject to the rebuttable presumption that they may be equitably tolled upon the particular facts of a case. *Irwin v. Dep't of Veterans Affs.*, 498 U.S. 89, 95–96 (1990). A litigant's failure to meet the deadline risks dismissal for failure to state a claim. *See Arbaugh*, 546 U.S. at 511–13. But untimeliness generally must be raised in an answer (or amended answer), or the issue may be waived. *See Kontrick v. Ryan*, 540 U.S. 443, 459 (2004).

Beginning in the early 2000s, the Supreme Court endeavored to "bring some discipline" to the use of the jurisdictional label. *See Henderson*, 562 U.S. at 435 (first citing *Reed Elsevier, Inc. v. Muchnick*, 559 U.S. 154, 161–62 (2010); and then citing *Kontrick*, 540 U.S. at 455). It perceived a problem with "drive-by jurisdictional rulings." *See Arbaugh*, 546 U.S. at 511 (quoting *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 91 (1998)). It has instructed that "[c]larity would be facilitated if courts and litigants used the label 'jurisdictional' not for claim-processing rules, but only for prescriptions delineating the classes of cases (subject-matter jurisdiction) and the persons (personal jurisdiction) falling within a court's adjudicatory authority." *Kontrick*, 540 U.S. at 455. We must decide whether the petition deadlines of section 6226, enacted in 1982, provide jurisdictional limits or claims processing rules.

IV. *The Clear Statement Rule*

"Only Congress may determine a lower federal court's subject-matter jurisdiction." *Kontrick*, 540 U.S. at 452 (citing U.S. Const. art. III, § 1). "Because Congress decides whether federal courts can hear cases at all, it can also determine when, and under what conditions, federal courts can hear them." *Bowles v. Russell*, 551 U.S. 205, 212–13 (2007). "Congress is free to attach the conditions that go with the jurisdictional label to . . . a claim-processing rule." *Henderson*, 562 U.S. at 435. "[I]t is no less 'jurisdictional' when Congress prohibits federal courts from adjudicating an otherwise legitimate 'class of cases' after a certain period has elapsed . . . ." *Bowles*, 551 U.S. at 213.

However, Congress must "clearly state[]" that a filing deadline is jurisdictional; and absent such a clear statement, "courts should treat the restriction as nonjurisdictional in character." *Arbaugh*, 546 U.S. at 515–16. "Congress must do something special, beyond setting an exception-free deadline, to tag a statute of limitations as jurisdictional and so prohibit a court from tolling it." *Wong*, 575 U.S. at 410. But Congress "need not use magic words." *Henderson*, 562 U.S. at 436. A statutory deadline may be jurisdictional even without using the word "jurisdiction." *See, e.g.*, *Bowles*, 551 U.S. at 208–10 (holding 28 U.S.C. § 2107(a) and (c) to be jurisdictional); *United States v. Brockamp*, 519 U.S. 347, 350–51 (1997) (holding section 6511 to be jurisdictional). But the "traditional tools of statutory construction must plainly show that Congress imbued a procedural bar with jurisdictional consequences." *Wong*, 575 U.S. at 410.

"To determine whether Congress has made the necessary clear statement, we examine the 'text, context, and relevant historical treatment' of the provision at issue." *Musacchio v. United States*, 577 U.S. 237, 246 (2016) (quoting *Reed Elsevier*, 559 U.S. at 166). Statutes that provide jurisdictional deadlines share several qualities: They speak of a court's power "in jurisdictional terms or refer in any way to the jurisdiction" of the court. *Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 394 (1982). They "define a federal court's jurisdiction . . . , address its authority to hear untimely suits, [and] cabin its usual equitable powers." *Wong*, 575 U.S. at 411. Their context, such as placement within their statutory regime, history of reenactments, or a long-standing judicial interpretation, reflects that Congress imbued a deadline with "jurisdictional consequences." *See, e.g.*, *id.* at 410; *Henderson*, 562 U.S. at 439; *Bowles*, 551 U.S. at 209–13; *Zipes*, 455 U.S. at 394.

In the tax area specifically, the Supreme Court has twice considered whether a particular deadline is subject to equitable tolling. In *Brockamp*, 519 U.S. at 354, the Supreme Court considered whether the deadline by which to file a refund claim is subject to equitable tolling, concluding that Congress did not intend for equitable tolling to apply to the deadline for filing claims for refund. In *Boechler*, the Supreme Court considered whether the deadline by which to file a petition challenging a collection determination by the Commissioner is

subject to equitable tolling, concluding that it is. In so holding, the Supreme Court discussed *Brockamp* and emphasized the distinctive features of the refund deadline that led to differing conclusions, writing:

> Congress wrote the [refund] time limit in "unusually emphatic form," and its "detailed technical" language "c[ould not] easily be read as containing implicit exceptions." *Id.*, at 350. The statute also "reiterate[d]" the deadline "several times in several different ways." *Id.*, at 351. And the statute "explicit[ly] list[ed]" numerous (six) exceptions to the deadline. *Id.*, at 352. The "nature of the underlying subject matter—tax collection—underscore[d] the linguistic point." *Ibid.* That was because of the "administrative problem" of allowing equitable tolling when the "IRS processe[d] more than 200 million tax returns" and "issue[d] more than 90 million refunds" each year. *Ibid.*

Boechler, P.C. v. Commissioner, 142 S. Ct. at 1500–01 (citing *Brockamp*, 519 U.S. at 350–52).

V. *TEFRA Jurisdictional Limit*

The multiple petition deadlines within section 6226 coordinate so as to make a clear statement that the deadlines are jurisdictional.

A. *The TEFRA Jurisdictional Grant*

The Tax Court may exercise jurisdiction only to the extent expressly provided by statute. *Breman v. Commissioner*, 66 T.C. 61, 66 (1976). Section 7442 alone does not vest the Tax Court with any jurisdiction. *Hallmark Rsch. Collective v. Commissioner*, 159 T.C. 126, 136 (2022). Section 6226 grants the Tax Court, the appropriate U.S. district court, and the Court of Federal Claims the authority to redetermine adjustments of partnership items. And section 6226(a) and (b) imposes separate, but complementary, jurisdictional prerequisites. Upon close examination, all of those prerequisites relate to timing. Taken as a whole, considering the separate but complementary petition deadlines of section 6226(a) and (b) plus the various codified exceptions, TEFRA "sets forth its limitations in a highly detailed technical manner, that, linguistically speaking, cannot easily be read as containing implicit exceptions." *Brockamp*, 519 U.S. at 350.

B. *Prerequisites for All TEFRA Petitions*

Section 6226(a) and (b) requires the issuance of a valid FPAA for the Court to have jurisdiction over a readjustment proceeding. Under section 6226(a), a petition for readjustment may be filed only "[w]ithin 90 days *after* the day on which a notice of a final partnership administrative adjustment is mailed to the tax matters partner." (Emphasis added.) And a petition may be filed under section 6226(b) only "within 60 days after the close of the 90-day period."

"The FPAA is the jurisdictional notice that permits a partner to file a petition challenging the IRS' adjustments." *Taurus FX Partners, LLC v. Commissioner*, T.C. Memo. 2013-168, at *7. "The FPAA is to the litigation of partnership items the equivalent of the statutory notice of deficiency in other cases." *Sirrine Bldg. No. 1 v. Commissioner*, T.C. Memo. 1995-185, 1995 WL 232791, at *3, *aff'd*, 117 F.3d 1417 (5th Cir. 1997) (unpublished table decision). Both the Notice of Deficiency and the FPAA serve as prerequisites to filing a petition with the Tax Court. *Compare* I.R.C. § 6226, *with* I.R.C. § 6213. And both sections 6213(a) and 6226(a) and (b) include the requirement of a jurisdictional notice in the same sentence as (and thus "linked" to) the petition periods for their respective petitions. *See Hallmark*, 159 T.C. at 139–40.

Requiring an FPAA before a petition can be filed is the first of several timing requirements built into the TEFRA jurisdictional rules, and it applies to all petitions in TEFRA cases. A petition may not be filed before the Commissioner mails an FPAA to the TMP. I.R.C. § 6226(a). This timing requirement in section 6226(a) permits a petition only "after the day on which a notice of final partnership administrative adjustment is mailed to the tax matters partner."

C. *Prerequisites for Section 6226(a) Petitions*

For the Court to have jurisdiction over a petition filed under section 6226(a), two additional requirements must be met. As already stated, the Commissioner must have issued a valid FPAA. In addition, it is well established that a petition under section 6226(a) must be filed by the TMP. I.R.C. § 6226(a); *Mishawaka Props.*, 100 T.C. at 362; *PAE Enters.*, T.C. Memo. 1988-222. And a TMP-filed petition must be filed within 90 days of when the Commissioner mailed the FPAA to the

TMP. I.R.C. § 6226(a). Upon closer examination, both of these additional requirements also relate to the timing for filing a petition.

Of course, the explicitly stated 90-day period within which to file the petition under section 6226(a) is a timing requirement. The Court has previously held that it lacks jurisdiction under section 6226(a) over a petition filed by a TMP beyond the 90-day period. *Barbados #6*, 85 T.C. at 906. The Court may nonetheless have jurisdiction over a petition filed by a TMP outside that 90-day period, but only if the TMP also qualifies as a notice partner and jurisdiction would be pursuant to section 6226(b). *Id.*

The requirement that a section 6226(a) petition be filed by the TMP operates as a timing requirement as to other partners. Before the statute was amended, a petition filed by a partner other than the TMP during the exclusive TMP petition period was dismissed as premature. And that dismissal was for lack of jurisdiction. *See, e.g.*, *Sierra Design Rsch. & Dev. Ltd. P'ship v. Commissioner*, T.C. Memo. 1989-506 (dismissing multiple premature petitions for lack of jurisdiction). Even after Congress's amendment, the Court lacks jurisdiction over a premature petition unless no other timely petition is filed. I.R.C. § 6226(b)(5). The requirement that only the TMP can file a petition in the first 90 days after issuance of an FPAA amounts to a timing requirement as to all other partners because the Court lacks jurisdiction over a petition prematurely filed by a partner other than the tax matters partner even though the Court might have jurisdiction over that same petition if it was filed during the subsequent section 6226(b) petition period.[9]

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[9] In *Brockamp*, the Supreme Court found noteworthy the fact that the statute setting forth the deadline at issue also "sets forth explicit exceptions to its basic time limits." *Brockamp*, 519 U.S. at 351. With TEFRA, the premature petition provision is just one such exception. There is an additional exception for partners who are not sent timely notice by the Commissioner. *See* I.R.C. § 6223(e). In that and other situations, the Code removes the partner from the partnership-level proceeding and permits such partner to proceed independently through a partner-level proceeding. The Code and the regulations also provide other circumstances in which a partner proceeds separately because of unique, partner-specific circumstances. These circumstances include, but are not limited to, when a partner requests prompt assessment, when a partner is subject to criminal investigation, or when a partner is a debtor in bankruptcy. *See* I.R.C. § 6231(c);

The Congressional response to the dismissal of premature petitions shows its awareness of the Court's treating the petition periods as jurisdictional. Before the enactment of section 6226(b)(5), the filing of a premature petition regularly led to the Court's dismissing it for lack of jurisdiction. *See, e.g.*, *Transpac Drilling Venture 1982-22 v. Commissioner*, 87 T.C. 874, 876 (1986) (finding premature petition "ineffective to commence a partnership action"); *Transpac Drilling Venture 1983-63 v. United States*, 16 F.3d 383, 390 (Fed. Cir. 1994) (affirming dismissal of a premature petition for lack of jurisdiction). In 1997, Congress recognized that under then-existing law, dismissal occurs when petitions were filed during the incorrect period.

> The Tax Matters Partner is given the exclusive right to file a petition for a readjustment of partnership items within the 90-day period after the issuance of the notice of a final partnership administrative adjustment (FPAA). If the Tax Matters Partner does not file a petition within the 90-day period, certain other partners are permitted to file a petition within the 60-day period after the close of the 90-day period. There are ordering rules for determining which action goes forward and for dismissing other actions.

H.R. Rep. No. 105-220, at 686 (1997) (Conf. Rep.), *reprinted in* 1997-4 C.B. (Vol. 2) 1457, 2156. To remedy this, Congress enacted section 6226(b)(5), providing relief for what Congress dubbed "premature petitions," a name denoting the significance of the timing requirements. Taxpayer Relief Act of 1997 § 1240(a). Under new section 6226(b)(5), a premature petition (i.e., one filed by a partner other than the TMP during the exclusive period for petitioning by a TMP) is deemed to be filed at the close of the 60-day petition period for petitions by partners other than the TMP, but only if no other valid petition is filed.

We previously observed in *Hallmark* that congressional history may shed light on the jurisdictional nature of a statute. We observed: "Over nearly a hundred years of reenactments and amendments of section 6213(a), Congress has left substantially unchanged the wording of its jurisdictional grant, and Congress's additions to section 6213(a) have clarified that its deadline is jurisdictional." *Hallmark*, 159 T.C.

Treas. Reg. §§ 301.6231(c)-4 through -8. In each situation, the petition deadlines of section 6226(a) and (b) no longer apply.

at 154. Although TEFRA, having been enacted in 1982, lacks 100 years of reenactments and amendments, the only amendment to section 6226 that relates to the time within which to file a petition acknowledges that, absent amendment, a petition filed outside the statutorily prescribed timeframe would be subject to a jurisdictional dismissal. If the Tax Court had the power to use equitable principles to address a petition filed outside the appropriate time period, Congress's amendment would have been unnecessary. But Congress recognized that the Tax Court does not have the power to alter the petition periods imposed by section 6226(a) and (b). Thus, Congress, through this amendment, recognized those petition periods as jurisdictional.

For nearly 40 years, courts have recognized the TEFRA petition deadlines as jurisdictional. For example, in *Utah Bioresearch 1984, Ltd. v. Commissioner*, T.C. Memo. 1989-612, this Court dismissed a TEFRA case for lack of jurisdiction because the petition was not timely filed under either section 6226(a) or (b). Such dismissals have been upheld on appeal. For example, in *Stone Canyon Partners v. Commissioner*, T.C. Memo. 2007-377, *aff'd sub nom. Bedrosian v. Commissioner*, 358 F. App'x 868 (9th Cir. 2009), this Court dismissed a TEFRA case for lack of jurisdiction because the petition was untimely. On appeal, the U.S. Court of Appeals for the Ninth Circuit specifically "affirm[ed] the Tax Court's dismissal for lack of jurisdiction of the[] untimely petition." *Bedrosian*, 358 F. App'x at 869.

More recently, the U.S. Court of Appeals for the Fifth Circuit held that the petition deadlines of section 6226 are jurisdictional and explicitly rejected equitable tolling. *See A.I.M. Controls, L.L.C. v. Commissioner*, 672 F.3d 390 (5th Cir. 2012). In that case, the Commissioner issued an FPAA in August 2008. A complaint challenging the FPAA was filed in U.S. district court within 90 days of the Commissioner's issuance of the FPAA. But that petition was not accompanied by the requisite jurisdictional deposit. *See* I.R.C. § 6226(e). After that complaint was dismissed, an untimely petition was filed in the Tax Court. This Court dismissed the case for lack of jurisdiction by order. Applying Supreme Court precedent on the question of when procedural rules such as the TEFRA filing period should be considered jurisdictional requirements, the

Fifth Circuit concluded that "[s]ection 6226's terms convince us that § 6226's filing period is jurisdictional" and "we have no authority to alter it." *A.I.M. Controls, L.L.C. v. Commissioner*, 672 F.3d at 395.

And most recently, the U.S. Court of Appeals for the Ninth Circuit likewise held that the petition deadlines of section 6226(a) and (b) are jurisdictional. *SNJ Ltd. v. Commissioner*, 28 F.4th 936 (9th Cir. 2022). In its analysis in that case, the Ninth Circuit focused on section 6226(f), which provides:

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

In focusing on this provision, the Ninth Circuit observed that the filing deadline (such as the deadlines in section 6226(a) and (b)) and the indication that such deadline is jurisdictional need not be in the same subsection of the Code. *SNJ Ltd. v. Commissioner*, 28 F.4th at 947. It held that section 6226(f) "does link the filing deadline to a grant of jurisdiction." *SNJ Ltd. v. Commissioner*, 28 F.4th at 947. From this observation, it concluded that the TEFRA petition deadlines are jurisdictional. *Id.*

D. *Prerequisites for Section 6226(b) Petitions*

Like section 6226(a), section 6226(b) provides multiple requirements to invoke a court's jurisdiction to readjust partnership items. Both provisions require the Commissioner to have mailed an FPAA to the TMP. And like section 6226(a), section 6226(b) authorizes only specific types of partners to file a petition: notice partners and 5-percent groups. Most importantly for purposes of the present discussion, section 6226(b), like section 6226(a), establishes a window of time within which to file. Specifically, a notice partner or a 5-percent group "may, within 60 days after the close of the 90-day period set forth in subsection (a), file a petition." I.R.C. § 6226(b)(1). When considering where the timing requirement fits within the statutory scheme, it is notable that the timing requirement of section 6226(b) is found between the words "may" and "file."

See Bowles, 551 U.S. at 212–13 ("Because Congress decides whether federal courts can hear cases at all, it can also determine when, and under what conditions, federal courts can hear them.").

E. *TEFRA Administrability*

Allowing equitable tolling to alter the periods within which to file a TEFRA petition would create serious administrative problems. In *Brockamp*, 519 U.S. at 352–53, the Supreme Court acknowledged that reading an equitable tolling exception into section 6511 would create "serious administrative problems" by forcing the IRS to "respond to, and perhaps litigate, large numbers of late claims, accompanied by requests for 'equitable tolling' which, upon close inspection, might turn out to lack sufficient equitable justification." Because of the "nature and potential magnitude of the administrative problem," the Supreme Court reasoned "that Congress decided to pay the price of occasional unfairness in individual cases . . . in order to maintain a more workable tax enforcement system." *Brockamp*, 519 U.S. at 352–53.

These problems are magnified in TEFRA proceedings because the proceedings affect multiple parties, ranging from two to thousands. Thus, allowing equitable tolling because of one party's circumstances would affect multiple parties.

1. *Nullifying the Petition Coordination Provisions*

Treating the TEFRA petition deadlines as nonjurisdictional would nullify Congress's finely tuned coordination provisions. As previously discussed, TEFRA establishes a series of coordinated petition deadlines with specific consequences for petitions filed outside their applicable periods. TMP petitions filed during the first 90 days after an FPAA is issued take priority over later filed notice partner petitions. I.R.C. § 6226(a). This has the effect of providing the TMP the opportunity to control key aspects of litigation such as forum selection. Timely notice partner petitions take priority over premature notice partner petitions. I.R.C. § 6226(b)(1), (5). As for equitable solutions for filing a petition outside of the congressionally created periods, Congress addressed a potentially inequitable situation by allowing premature petitions to be treated as timely if no other petition is filed. I.R.C. § 6226(b)(5). It did so long

after the Court had dismissed untimely petitions for lack of jurisdiction. Congress chose to enact a remedy for premature petitions but not for late petitions.

Equitable tolling could result in an untimely petition in the Tax Court divesting another court of jurisdiction. When challenging an FPAA, the petitioning partner may file a petition in the Tax Court, U.S. district court, or the Court of Federal Claims. I.R.C. § 6226(a) and (b)(1). In the case of a notice partner or 5-percent group petition, section 6226(b)(2) prioritizes Tax Court petitions over petitions filed in any other court. It provides: "If more than 1 action is brought under paragraph (1) with respect to any partnership for any partnership taxable year, the first such action *brought in the Tax Court* shall go forward." I.R.C. § 6226(b)(2) (emphasis added). Other than by cross-reference to paragraph (1), this priority provision is not limited to timely petitions. Thus, if equitable tolling applies to paragraph (1) to allow the Tax Court to take jurisdiction over an otherwise untimely petition, the Tax Court could do so notwithstanding a timely petition in another court. Because the priority provision is not limited to timely petitions, an untimely petition to the Tax Court allowed by equitable tolling would, by statute, result in divesting any other court of jurisdiction.

2. *Disrupting the Assessment Process*

Equitable tolling of the TEFRA petition deadline would make the process for assessment and collection of deficiencies resulting from a TEFRA proceeding unworkable. As previously described, a TEFRA proceeding does not redetermine income tax liabilities; it readjusts adjustments to partnership items. The Commissioner is prohibited from assessing tax attributable to partnership items until the conclusion of a TEFRA proceeding, whether as a result of the petition period passing without the filing of a petition or, if a petition is filed, after a final decision. I.R.C. § 6225(a). Once either of those events occurs, the Commissioner must turn partnership-level adjustments into partner-level assessments. *See* I.R.C. §§ 6231(a)(6), 6230(a)(2)(A)(i).

This process for turning partnership-level adjustments into partner-level assessments requires allocating the partnership-level adjustments among the partners, who may

number in the thousands. The tax effect of those adjustments must then be computed partner by partner. This process begins either after the petition periods expire with no petitions having been filed or after a decision of the Court if a petition is filed.

Making partner-level assessments occurs through two potential mechanisms. For tax that can be computed without regard to partner-level determinations, the Commissioner can make a computational adjustment, computing and assessing the tax effect of the partnership-level adjustments. I.R.C. § 6231(a)(6). If the amount of tax cannot be computed without regard to partner-level determinations, the Commissioner must issue Notices of Deficiency. I.R.C. § 6230(a)(2)(A)(i); *N.C.F. Energy Partners*, 89 T.C. at 744.

Because of the complexity in reducing partnership-level adjustments to partner-level assessments, the period of limitation is extended to allow time for this process. But that extended period is not without limit. Once the period within which to file a petition has lapsed (or a decision is final, if a petition is filed), the Commissioner has one year to complete the computations and issue a computational adjustment or an affected item Notice of Deficiency to each partner. I.R.C. § 6229(d).

Allowing untimely petitions would upend this assessment process. If a timely petition is not filed, the restrictions on assessment are lifted and the Commissioner initiates the process for making partner-level assessments. I.R.C. § 6225(a)(2). But those restrictions on assessment do not remain in place in the event of an untimely petition. *Id.*

Confronted with such a situation, the Commissioner is faced with one of two alternatives: continue with or halt the assessment process. Both present administrative problems that do not arise if the petition deadline is jurisdictional.

Continuing with the assessment process creates multiple administrative problems. If the Commissioner proceeds and assesses liabilities notwithstanding an active (but untimely) challenge in the Tax Court, the partners cannot halt assessment. If a petition is filed in the Tax Court, section 6225(b) generally allows the Tax Court to enjoin assessment while that proceeding is ongoing. But that power is limited to situations in which the petition was timely: "The Tax Court shall

have no jurisdiction to enjoin any action or proceeding under this subsection unless a *timely* petition for a readjustment of the partnership items for the taxable year has been filed . . . ." *Id.* (emphasis added). Thus, the Commissioner would be permitted to continue with assessment (and collection) notwithstanding an active Tax Court case.

Then there is the possibility of a decision that conflicts with assessments that have already been computed. If the Commissioner were to proceed with assessment while the Tax Court took jurisdiction over an untimely petition, the ultimate result of the Tax Court case might differ from what the Commissioner had determined in the FPAA. The result would be a recomputation of the computational adjustments and affected item Notices of Deficiency that may have already been issued.[10]

The Commissioner is arguably placed in a more perilous position if he does not assess. No court has addressed the applicability of the suspension of the period of limitation under section 6229(d) in the case of an untimely petition. The Commissioner would likely assess to avoid a potential ruling that the suspension provision does not apply. And if the Commissioner were to delay assessment, such a delay would carry with it the increased chance that the liability would become uncollectable.

3. *Treating All Parties as Parties*

Whatever complications might result from allowing equitable tolling are not limited to the Commissioner and the partner seeking equitable tolling; they affect all partners. Section 6226(c)(1) requires that "each person who was a partner in such partnership at any time during such year shall be treated as a party to such action."[11] Thus, any one

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[10] Further, in the case of affected item Notices of Deficiency, it is possible that those may have been petitioned to the Tax Court. The result could be the staying of partner-level cases while an otherwise untimely partnership-level case proceeds. Alternatively, it could call into question the validity of an affected item Notice of Deficiency as premature and result in dismissal.

[11] Notably, Congress created an exception to treating all partners as parties to address the potentially inequitable situation in which the Commissioner does not provide proper notice to a partner. *See* I.R.C. § 6223(e). Depending on the specific circumstances, the partner who was not provided proper notice may choose to be bound by the TEFRA proceeding or

partner's claim for equitable tolling would result in all partners' being parties to any resulting action.

Such a claim would provide an opportunity for gamesmanship. A partnership with thousands of partners need seek out only one partner who might present circumstances meriting equitable tolling. The result would be that all partners would be the beneficiaries of equitable tolling though it be merited by only one partner.

Subjecting section 6226(b) to equitable tolling would upend partnership collections subject to TEFRA and allow partners whose circumstances would not warrant equitable tolling to circumvent the rules of section 6226.

VI. *Equitable Tolling*

Even setting aside the question of jurisdiction, the complexity of the TEFRA provisions leaves no room for equitable tolling of the petition deadlines in section 6226. The Supreme Court in *Boechler* and other cases treated the question of jurisdiction and availability of equitable tolling as separate questions. *Boechler, P.C. v. Commissioner*, 142 S. Ct. at 1500 ("Of course, the nonjurisdictional nature of the filing deadline does not help Boechler unless the deadline can be equitably tolled."). This is so because "[t]he mere fact that a time limit lacks jurisdictional force, however, does not render it malleable in every respect." *Nutraceutical Corp. v. Lambert*, 586 U.S. 188, 192 (2019). A nonjurisdictional deadline is entitled to a rebuttable presumption in favor of equitable tolling. *Holland v. Florida*, 560 U.S. 631, 645–46 (2010) (citing *Irwin*, 498 U.S. at 95–96). But as the Supreme Court has cautioned, "[t]he *Irwin* presumption, however, is just that—a presumption." *Arellano v. McDonough*, 143 S. Ct. 543, 547 (2023).

The presumption in favor of equitable tolling is rebutted "if 'there [is] good reason to believe that Congress did *not* want the equitable tolling doctrine to apply.'" *Id.* at 548 (alteration in original) (quoting *Brockamp*, 519 U.S. at 350). And in several cases, the Supreme Court has concluded that the presumption is rebutted. We turn to those cases.

Arellano, 143 S. Ct. at 546, involved an application for veterans disability benefits. The statutory scheme provided

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may choose not to be bound and to resolve matters with the Commissioner independently. *Id.*

that the effective date of an award for benefits would not be earlier than the day the Department of Veterans Affairs (VA) receives the veteran's application. The statutory scheme provided 16 exceptions, one of which was if the VA received the application within one year of discharge. *Id.* A unanimous Supreme Court held that there was "very good reason" to conclude that the presumption of equitable tolling was rebutted. *Id.* at 548. It held that equitable tolling was "incongruent with the statutory scheme." *Id.* at 551.

Like the deadline in *Arellano*, TEFRA includes various provisions intended to account for people who might be unable to file a timely petition. As previously discussed, a partner who is in bankruptcy is removed from the proceeding and thus not subject to the petition deadline. I.R.C. §§ 6226(d), 6231(b); Treas. Reg. § 301.6231(c)-7. Likewise, a partner who does not receive timely notice may choose whether to be bound by a TEFRA proceeding or to proceed independently. I.R.C. § 6223(e). And Congress amended TEFRA to address the inequitable situation of a premature petition. I.R.C. § 6226(b)(5). Perhaps most compelling, however, is that, as in *Arellano*, equitably tolling the TEFRA petition deadline would be fundamentally incongruent with the statutory scheme. *See supra* Part V.E. As detailed above, it would upend the entire assessment process that TEFRA was intended to streamline.

Brockamp, 519 U.S. at 348, involved the deadline within which to file a claim for a refund of taxes. In two cases consolidated before the Supreme Court, the taxpayers presented circumstances that interfered with their ability to file timely claims for refund. *Id.* Without addressing whether an untimely claim presented a jurisdictional bar, the Supreme Court unanimously held that the deadline to file such a claim nonetheless was not subject to equitable tolling. *Id.* at 354. In so holding, the Supreme Court focused on the "detail" of the section at issue, "its technical language," and "the explicit listing of exceptions." *Id.* at 352. The Supreme Court also looked to the interplay of the deadline to file a claim with other provisions of the Code. *Id.* at 350–53. It observed that tax law "is not normally characterized by case-specific exceptions reflecting individualized equities." *Id.* at 352.

Like the deadline at issue in *Brockamp*, the section 6226 petition deadline is highly detailed. It likewise contains

explicit exceptions. But even more so than the statute at issue in *Brockamp*, the interplay between the TEFRA petition deadline and the entire flow of events leading to assessment counsels against finding that equitable tolling can apply. *See supra* Part V.E.2.

Auburn Regional Medical Center, 568 U.S. at 148–49, involved the question of whether the deadline for a healthcare provider to administratively appeal an initial determination of reimbursement under Medicare was jurisdictional, and as a secondary question, whether that deadline was subject to equitable tolling. Although it found the deadline not to be jurisdictional, a unanimous Supreme Court also found that equitable tolling did not apply. The Supreme Court observed that, since the relevant statute was enacted, no court had ever held that equitable tolling applied and at no time did Congress ever express disapproval of how the agency interpreted and applied the deadline. *Id.* at 149.

Like the deadline at issue in *Auburn Regional Medical Center*, the TEFRA petition deadline has never been found to be subject to equitable tolling in the more than 40 years TEFRA has been in effect.[12] And Congress was well aware of courts treating the section 6226 petition deadlines as jurisdictional. *See supra* Part V.C. Yet Congress created only isolated exceptions to the petition deadlines. *See, e.g.*, I.R.C. § 6226(b)(5).

Three courts of appeals have recently held that the deadline by which to file a petition in a deficiency case is not jurisdictional. *See Oquendo v. Commissioner*, 148 F.4th 820 (6th Cir. 2025); *Buller v. Commissioner*, 152 F.4th 84 (2d Cir. 2025); *Culp v. Commissioner*, 75 F.4th 196 (3d Cir. 2023). In each case the respective court went on to conclude that the period within which to file a petition in a deficiency case can be equitably tolled. The rationales relied upon by the U.S. Courts of Appeals for the Third and Second Circuits, however, reinforce why the TEFRA petition deadlines do not leave room for equitable tolling.[13]

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[12] Although TEFRA has been repealed for partnership taxable years beginning after December 31, 2017, the petition deadline of section 6226 remains in effect for any partnership taxable years beginning before that date. *See supra* note 1.

[13] In *Oquendo v. Commissioner*, 148 F.4th at 833–34, the U.S. Court of Appeals for the Sixth Circuit remanded the question of equitable tolling

The Third Circuit's analysis in *Culp* is particularly instructive. To determine whether equitable tolling applied, the court began with a question: "[W]e ask whether there is 'good reason to believe that Congress did *not* want the equitable tolling doctrine to apply.'" *Culp v. Commissioner*, 75 F.4th at 203 (quoting *Arellano*, 143 S. Ct. at 548). The court then looked to the text of the statute, explaining that if the deadlines are set forth in a highly detailed technical manner, they cannot easily be read as containing implicit exceptions. *Id.* (citing *Brockamp*, 519 U.S. at 350). And the court went on to observe that "when a legislature lays out an 'explicit listing of exceptions' to a deadline, it shows its intent for 'courts [not to] read other unmentioned, open-ended, "equitable" exceptions into the statute.'" *Id.* (quoting *Brockamp*, 519 U.S. at 352).

The TEFRA petition deadlines provide an example of precisely the circumstances the Third Circuit described. The petition deadlines are highly technical and contain exceptions so that, where circumstances might require flexibility, that flexibility does not interfere with the TEFRA proceeding. To begin, only the TMP can file a petition for the first 90 days after an FPAA is issued. I.R.C. § 6226(a). A notice partner's right to file a petition arises only if the TMP does not file one. I.R.C. § 6226(b). A premature petition by a notice partner is treated as having been filed at the end of the notice partner petition period, but only if no other valid petition is filed. I.R.C. § 6226(b)(5). If the Commissioner fails to provide proper notice, special rights arise that can remove the partner from the TEFRA proceeding so as not to disrupt the unified proceeding that binds all other partners. I.R.C. § 6223(e). And the bankruptcy of a partner removes that partner from the proceeding so that a bankruptcy stay does not affect the TEFRA proceeding or its deadlines. I.R.C. §§ 6226(d), 6231(b); Treas. Reg. § 301.6231(c)-7. These highly technical deadlines cannot easily be read to allow for implicit exceptions.

The Second Circuit's rationale in *Buller* also counsels against finding equitable tolling. The Second Circuit characterized the deficiency petition deadline of section 6213 as appearing "in a section of the Tax Code that is unusually protective of taxpayers." *Buller v. Commissioner*, 152 F.4th at 88 (quoting

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applied on the facts of that case after concluding that the petition deadline in section 6213 is not jurisdictional.

Boechler, P.C. v. Commissioner, 142 S. Ct. at 1500). In contrast the very design of TEFRA removes a partner's unique circumstances from the partnership-level proceeding. The entire statutory scheme is designed to determine items at the partnership level. I.R.C. § 6221 ("The tax treatment of any partnership item . . . shall be determined at the partnership level."). This scheme replaced the prior system, where each partner's unique circumstances placed a burden on administrative and judicial resources. As described by the Second Circuit:

> Prior to 1982 adjustments of partnership items were determined at the individual partners' level, resulting in duplication of administrative and judicial resources and inconsistent results between partners.
>
> To solve this problem, Congress enacted [TEFRA], which created a single unified procedure for determining the tax treatment of all partnership items at the partnership level.

Randell v. United States, 64 F.3d 101, 103 (2d Cir. 1995). TEFRA was intended to unify partnership-level proceedings rather than to focus on the specifics of any one partner. *See* H.R. Rep. No. 97-760, at 600 ("Under the conference agreement, the tax treatment of items of partnership income, loss, deductions, and credits will be determined at the partnership level in a unified partnership proceeding rather than in separate proceedings with the partners."). These provisions were not intended to be "unusually protective of taxpayers"; they were intended to look beyond the circumstances of specific partners and to provide a single unified proceeding.

"Whether a rule precludes equitable tolling turns not on its jurisdictional character but rather on whether the text of the rule leaves room for such flexibility." *Nutraceutical*, 586 U.S. at 192. In evaluating that text, we look not just to the wording of the deadline itself, but also to the interplay of that deadline with related provisions of the Code, and Congress's action (or inaction) with respect to the relevant provision. All of these factors weigh against equitable tolling.

VII. *Conclusion*

Section 6226(b) sets forth a 150-day deadline within which to file a petition seeking readjustment of adjustments in an FPAA. The text, context, and historical treatment of that provision indicate that the 150-day deadline is jurisdictional. In addition, in the broader context of the TEFRA provisions,

their complexity leaves no room for equitable tolling. Because the Petition underlying this case was filed more than 150 days after the FPAA was mailed to the TMP, it is untimely. In accordance with the foregoing, the Commissioner's Motion to Dismiss for Lack of Jurisdiction will be granted.

To reflect the foregoing,

An appropriate order and decision will be entered.

Reviewed by the Court.

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

WEILER, LANDY, and FUNG, *JJ.*, concur in the result.

MARSHALL, *J.*, concurs in part and dissents in part.

TORO, *J.*, with whom URDA, *C.J.*, and PUGH, *J.*, join, concurring in the result: For the reasons stated in Part VI of the opinion of the Court, I agree that this case should be dismissed. *Cf. Matar v. Transp. Sec. Admin.*, 910 F.3d 538, 541 (D.C. Cir. 2018) (dismissing an untimely petition without addressing a jurisdictional challenge (standing) and explaining that the "rule of priority" set out in *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998), "does not invariably require considering a jurisdictional question before *any* nonjurisdictional issue" and that "courts may address certain nonjurisdictional, threshold issues so long as those issues can occasion a dismissal short of reaching the merits" (cleaned up) (first citing *Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 431 (2007); and then citing *Kaplan v. Cent. Bank of the Islamic Republic of Iran*, 896 F.3d 501, 513 (D.C. Cir. 2018))); *Whistleblower 21276-13W v. Commissioner*, 155 T.C. 21, 27 n.7 (2020) (reviewed) (noting the same principle, but finding it inapplicable on the facts before the Court).

WEILER, *J.,* concurring in the result: Petitioner makes a strong legal argument as to why equitable tolling should be applied in a TEFRA partnership proceeding, post *Boechler, P.C. v. Commissioner*, 142 S. Ct. 1493 (2022). However, petitioner has presented no evidence—and is utterly silent—as to why it would be eligible for such relief in this case.

Most recently we chose to reaffirm our holding that the 90-day deadline for filing a petition with this Court in deficiency cases is jurisdictional. *See Sanders v. Commissioner*, 161 T.C. 112, 120 (2023) (Foley and Weiler, JJ., dissenting). However, since *Boechler*, those courts of appeals considering the issue have reversed this Court, directing our application of equitable tolling. *See Oquendo v. Commissioner*, 148 F.4th 820 (6th Cir. 2025); *Buller v. Commissioner*, 152 F.4th 84 (2d Cir. 2025); *Culp v. Commissioner*, 75 F.4th 196 (3d Cir. 2023). Two decisions could be considered a coincidence, but three clearly creates a pattern.[1] Contrary to the opinion of the Court, I find petitioner's legal argument compelling and would heed the Supreme Court's recent edict by considering equitable tolling in this case.

The Supreme Court has said a litigant is entitled to equitable tolling of a statute of limitations only if the litigant establishes two distinct elements: "'(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way' and prevented timely filing." *Holland v. Florida*, 560 U.S. 631, 649 (2010) (quoting *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005)). The first prong of the Supreme Court's test requires a taxpayer to exercise reasonable diligence to ensure the timeliness of his petition. *Id.* at 653. The second prong of this test is met where the circumstances that caused a taxpayer's delay are extraordinary and beyond her control. *Menominee Indian Tribe of Wis. v. United States*, 577 U.S. 250, 256 (2016). Moreover, we are instructed to apply equitable tolling sparingly. *See Irwin v. Dep't of Veterans Affs.*, 498 U.S. 89, 96 (1990).

With the foregoing in mind, I find petitioner has failed to establish potential grounds for equitable tolling. Therefore,

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[1] I anticipate that the U.S. Court of Appeals for the Eleventh Circuit, where appeal of this case would presumably lie, would not view the text of section 6226 differently from that of section 6213, since the text used by Congress in both Code sections is similar.

this case is ultimately due to be dismissed. However, it would not be for lack of jurisdiction, but for petitioner's failure to state a claim upon which relief may be granted.

MARSHALL, *J.*, concurring in part and dissenting in part: I join Part VI of the opinion of the Court, which holds that equitable tolling is not available to toll the petition deadlines in section 6226. I agree with Judge Weiler, however, that a compelling post-*Boechler* pattern has been established by *Oquendo v. Commissioner*, 148 F.4th 820 (6th Cir. 2025), *Buller v. Commissioner*, 152 F.4th 84 (2d Cir. 2025) (2d Cir. 2025), and *Culp v. Commissioner*, 75 F.4th 196, 202 (3d Cir. 2023), and I would dismiss petitioner's case for failure to state a claim upon which relief may be granted rather than for lack of jurisdiction. *See* § 6226(h).