

# IRS Insights

## A closer look

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## Federal Circuit Rejects Treaty-Based Foreign Tax Credits Against Net Investment Income Tax

In companion cases *Bruyea v. United States*[1] and *Christensen v. United States*[2], the U.S. Court of Appeals for the Federal Circuit ruled that the foreign tax credit provisions of the U.S. income tax treaties with Canada and France do not allow taxpayers to credit foreign taxes paid against their net investment income tax ("NIIT").

[1] *Estate of Paul Bruyea v. United States*, 2026 U.S. App. LEXIS 26543 (Fed. Cir. Aug. 31, 2026)
[2] *Christensen v. United States*, 2026 U.S. App. LEXIS 26539 (Fed. Cir. Aug. 31, 2026)

### Background

In 2015, the U.S. citizen Taxpayers in *Bruyea* and *Christensen* realized income from the sale of foreign assets, paid tax to Canada and France, respectively, and incurred U.S. NIIT under section 1411 of the Internal Revenue Code ("IRC") on that same income. Taxpayers sought to offset their NIIT liabilities with foreign tax credits ("FTC"), relying on the double-taxation provisions found in Article 24 of the applicable U.S. income tax treaties (the "Treaties"). The IRS disallowed the application of the FTC against NIIT and Taxpayers paid the NIIT. Taxpayers brought refund suits in the Court of Federal Claims, arguing that the Treaties permitted the use of FTCs to offset their NIIT liabilities. The Court of Federal Claims entered judgment in favor of the Taxpayers, finding that they were entitled to a Treaty-based FTC for their 2015 tax year.

The government appealed the decisions to the U.S. Court of Appeals for the Federal Circuit.

### U.S. Court of Appeals of the Federal Circuit Decision

The Court of Appeals of the Federal Circuit held that U.S. income tax treaties cannot provide for an FTC that is independent of the credit allowed by the IRC. The Court emphasized that the IRC permits taxpayers to apply FTCs to offset U.S. tax imposed under chapter 1 of Title 26 of the U.S. Code. The NIIT is imposed by chapter 2A of Title 26 of the U.S. Code and there is no provision allowing it to be offset by an FTC.[3]

Applying the U.S. Law Limitation Clause to the Credit Clauses of Article 24 of the Treaties, the Court in *Bruyea* concluded that Treaty-based FTCs are constrained by U.S. law and thus, the Credit Clauses do not go beyond the credits provided in the IRC. While the Court agreed that the General Principle Clause of Article 24 provides that double taxation shall be avoided in "accordance with the provisions and subject to the limitations of the law of the United States (as it may be amended from time to time without changing the general principle hereof)," the Court emphasized that the Treaties' general principle is the avoidance of double taxation and not absolute protection against it.

The Court in *Bruyea* further remarked that if the treaty drafters intended to alter the IRC's default treatment of certain taxes as excluded from the credit, such as the NIIT, the Treaty would explicitly state so. Absent such explicit language, the Court cannot interpret the Treaty as authorizing the FTC against the NIIT, which Congress did not include in chapter 1 of the IRC.

### Conclusion

*Bruyea* and *Christensen* address the scope of treaty-based FTCs and hold that such credits remain subject to the limitations imposed under U.S. law. The decisions provide helpful guidance in interpreting treaties and warrant review for transactions in which a U.S. taxpayer claims an FTC under a U.S. bilateral income tax treaty.

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## New Second Circuit Court Ruling on Limited Partner Exception from SECA Taxes

On September 17, 2026, a panel of the Second Circuit unanimously held that, in order to qualify for the limited partner exception from Self-Employment Contributions Act ("SECA") tax, a limited partner must not run, manage, or exercise managerial control over a partnership.[4]

### Background

The SECA requires self-employed individuals to pay taxes that fund the federal Social Security and Medicare programs.[5] A partner's share of income or loss from a partnership's trade or business generally is included in self-employment income.[6] However, an exception excludes certain income received by a limited partner from SECA tax.[7]

In 2023, the Tax Court held that, for purposes of section 1402(a)(13), the limited partner exception is available only to partners generally akin to passive investors determined by performing a functional analysis of the partner's roles and responsibilities.[8]

[3] *Bruyea*, 2026 U.S. App. LEXIS 26543, at *5; *Christensen*, 2026 U.S. App. LEXIS 26539, at *4
[4] *Soroban Capital Partners LP v. Comm'r*, No. 25-2079 (2026)
[5] Section 1401
[6] Section 1402
[7] Section 1402(a)(13)
[8] *Soroban Capital Partners LP et al. v. Comm'r*, 161 T.C. No. 12 (2023)

The Fifth Circuit later rejected the Tax Court's approach. It held that the limited partner exception applies if a partner did not play a significant role in managing or running the partnership's business.[9]

### *Soroban Capital Partners LP v. Commissioner*

The Second Circuit affirmed the Tax Court's decision in *Soroban*, holding that a functional analysis is required to determine whether the section 1402(a)(13) exception applies.[10] Under this approach, a partner does not qualify as a limited partner for SECA tax purposes based on title alone. Instead, as noted above, one needs to see whether, in addition to having limited liability, the partner does not run, manage, or control the partnership's business. This conclusion was based on its interpretation of the text of the statute and its ordinary meaning when enacted, the surrounding text and structure, and the legislative history.

The taxpayers at issue still have the ability to request review of both the Second and Fifth Circuit opinions. In addition, a separate appeal involving the same issue is pending before the First Circuit, which has not yet ruled.[11]

### Conclusion

Taxpayers should note that the definition of "limited partner" for purposes of SECA is still not resolved. Taxpayers and practitioners are waiting for additional action from the circuits and potential review by the Supreme Court to ultimately address the issue.

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## Court Holds that Partnership Deadline to File a Petition is Subject to Equitable Tolling

In a recent landmark decision[12], the U.S. Tax Court held for the first time that the 90-day deadline for partnerships to file a Tax Court petition under section 6234(a) is subject to equitable tolling.

### Background

In *Kings Road*, the taxpayer claimed a charitable contribution deduction related to a conservation easement on its 2020 Form 1065. After examining the return, the IRS mailed a Notice of Proposed Partnership Adjustment (NOPPA) to the taxpayer and its partnership representative which disallowed the charitable contribution deduction and asserted penalties.

The taxpayer retained new legal counsel after receiving the NOPPA and anticipated the IRS issuing a Final Partnership Adjustment (FPA). The counsel carefully tracked the IRS's FPA deadline and calculated that the IRS had until April 21, 2025 to mail the FPA. Under section 6234(a), a partnership must petition the Tax Court within 90 days of the date the IRS mails the FPA. So, if the IRS mailed the FPA on the last day, the taxpayer would need to file the petition by July 20, 2025.

An IRS Technical Services Passthrough Coordinator (TSPC) issued the FPA on March 25, 2025; they mailed a copy to the partnership and to the partnership representative. The IRS did not mail a copy of the FPA to taxpayer's new counsel (even though they had filed Form 2848, *Power of Attorney*, with the IRS). The FPA mailed to the partnership and partnership representative were returned to the IRS as "undeliverable." Taxpayer's new counsel contacted the revenue agent who conducted the examination in May 2025 to ask about the FPA and who stated that an FPA had not been mailed.

Taxpayer's new counsel filed a protective petition with the Tax Court on July 9, 2025. The 90-day window under section 6234(a) had expired on June 23, 2025, and the petition was filed 16 days after the deadline.

The IRS moved to dismiss on the grounds that the petition was untimely. Taxpayer argued that section 6234(a) is a non-jurisdictional claims-processing rule subject to equitable tolling.

[9] *Sirius Solutions L.L.L.P. v. Comm'r*, 2026 U.S. App. LEXIS 1307 (5th Cir. 2026) (issuing a substituted opinion and replacing the withdrawn opinion in *K. Alain, L.L.L.P. v. Comm'r,* No. 24-60240 (5th Cir. 2026), which was vacated and remanded to the Tax Court).

[10] *Soroban Capital Partners LP v. Commissioner*, No. 25-2079 (2026)

[11] *Denham Capital Management LP v. Commissioner* (No. 25-1349, 1st Cir.)

[12] *Kings Road Property, LLC v. Commissioner*, 167 T.C. No. 11 (2026).

### Court Decision

The Tax Court confirmed that the section 6234(a) deadline is not jurisdictional, following prior precedent in *Big Apple Tompkins Realty LLC V. Comm'r*.[13] Because the Tax Court found nothing in the text of section 6234(a) rebuts the presumption in favor of equitable tolling,[14] it held that section 6234(a) is subject to equitable tolling.

Next the Tax Court considered whether equitable tolling applied in this case. To qualify for equitable tolling, the petitioner must establish (1) that it pursued its rights diligently and (2) that extraordinary circumstances outside of its control prevented it from filing on time.[15]

Here, the taxpayer satisfied both prongs. First, the taxpayer's counsel diligently pursued the taxpayer's rights by contacting the IRS after the deadline for mailing the FPA had passed and filing a protective petition based on a reasonably calculated deadline. Second, the taxpayer was prevented from filing a timely petition because the FPA were not delivered and the revenue agent said that an FPA had not been sent; the Tax Court held that both of these circumstances were outside of the taxpayer's control. The Tax Court stated that it was suggesting that return mailed alone was sufficient to give rise to equitable tolling. Accordingly, the Tax Court denied the IRS's motion to dismiss.

### Conclusion

Although *Kings Road* permits equitable tolling, partnerships should note its limited application and the Tax Court's focus on the taxpayer's follow-up with the revenue agent and the revenue agent's affirmative statement that no FPA had been issued. Accordingly, partnerships receiving a NOPPA should diligently track the FPA timeline, maintain documentation of all communications with the IRS, and consider filing protective petitions as well as Forms 8988, *Election for Alternative to Payment of the Imputed Underpayment*.

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## Tax Court Says Disaster-Related Deadline Extensions Do Not Bar the Assertion of Accuracy-Related Penalties

In *Bowen v. Commissioner*, the Tax Court held that disaster relief declarations pursuant to section 7508A extend certain deadlines for time-based liabilities such as interest and deadline-based penalties. The Tax Court concluded that the scope of relief under section 7508A does not include section 6662 accuracy-related penalties as these penalties are not deadline-based but rather are determined in reference to items reported on a tax return. As such, the IRS is not barred from asserting accuracy-related penalties during a federally declared disaster.

### Background

In *Bowen*, Ohio taxpayers (the "Petitioners") petitioned the Tax Court on February 9, 2024 and January 15, 2025 (the "Petitions")[16], disputing the IRS's assessment of tax, interest, and penalties, including accuracy-related penalties under section 6662. On July 17, 2026, the Petitioners moved to amend their Petitions to assert that they are not liable for any interest and penalties, including section 6662 accuracy-related penalties, assessed by the IRS ("Respondent") during the period of the federally declared COVID-19 disaster.

The Tax Court denied the Petitioners' motion as procedurally defective and futile.

### Disaster-Related Deadline Extensions and Accuracy-Related Penalties

Section 7508A(a) authorizes the postponement of certain tax-related deadlines for up to one year for taxpayers affected by a federally declared disaster. In 2019, Congress added section 7508A(d), titled "mandatory 60-day extension." The 2019 version of section 7508A(d) provided that, when the President makes a federal disaster declaration, the period beginning on the earliest incident date specified in the declaration and ending 60 days later is disregarded in the same manner as the period specified under 7508A(a).

Section 6662 imposes an accuracy-related penalty equal to 20 percent of the portion of the underpayment to which the section applies. The penalty generally applies when a taxpayer underpays the tax required to be shown on its return, because of negligence, a substantial understatement of income tax, or another circumstance specified in the statute.

[13] 167 T.C. No. 11 (2026).

[14] Under *Holland v. Florida*, 560 U.S. 631 (2010), non-jurisdictional deadlines enjoy a rebuttable presumption in favor of equitable tolling. The Tax Court here explicitly distinguished the BBA from TEFRA.

[15] *See Menominee Indian Tribe of Wisconsin v. United States*, 577 U.S. 274 (2016).

[16] *Bowen v. Commissioner*, Docket Nos. 2215-24, 2216-24, 2219-24, 562-25 (T.C. July 21, 2026).

### Tax Court Order

According to the Tax Court, the mandatory disaster-related deadline extension during the COVID-19 pandemic did not suspend the assessment of accuracy-related penalties.

In moving to amend their Petitions, the Petitioners sought to assert that they are not liable for accuracy-related penalties assessed by the IRS during the COVID-19 disaster period because the 2019 version of section 7508A(d) automatically suspended various tax deadlines and precluded the IRS from assessing penalties and interest. In denying the Petitioner's motion, the Tax Court explained that accuracy-related penalties are based on an underpayment of tax and "are determined based on what is reported (or what fails to be reported) on a return, not based on tardiness." Therefore, even if section 7508A applied to extend a deadline, the extension would have no impact on the IRS's ability to assert accuracy-related penalties.

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