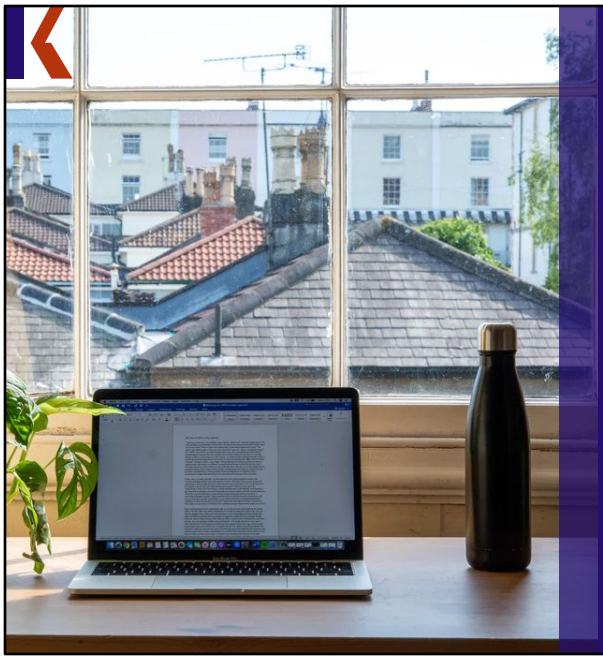


Current Federal Tax Developments

May 27, 2024

Kaplan Financial Education

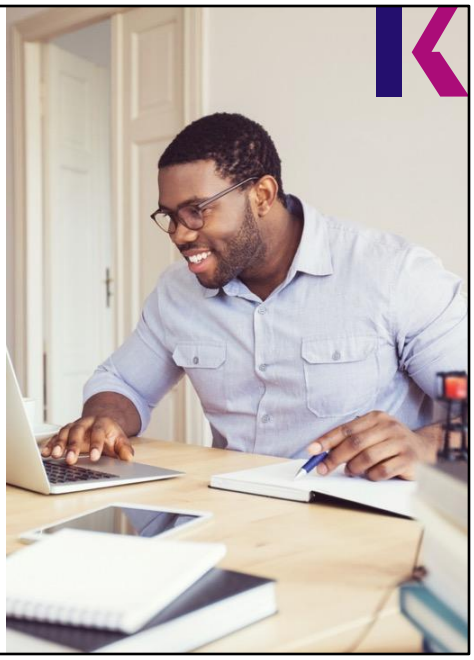
KAPLAN

This Week We Look At:

Yet another PLR requested for missed QSST election after S shares moved to trust following death of a shareholder

Tax preparer's conviction for willfully filing false returns upheld on appeal despite his argument he had doing what he did for years

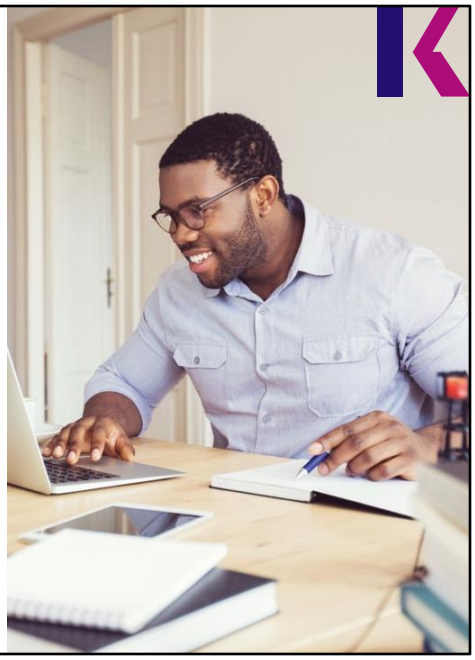
Letters to taxpayer from IRS Appeals did not extend the time to file suit for a claim for refund



https://www.currentfederaltaxdevelopments.com

This Week We Look At:

A partnership had properly elected to use BBA audit provisions early, rendering IRS FPAA invalid



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PLR Requested Due to Failure of Beneficiary to File Timely QSST Election

Photo by Aedrian Salazar on Unsplash

- PLR 202421005, May 24, 2025
  - Decedent had held his S corporation shares in a grantor trust (very well could have been a revocable living trust, but PLR doesn't state this)
  - When decedent died, the shares were transferred to a new trust
    - Trust terms were set to allow for a QSST election
    - Presumably the attorney who drafted the plan intended for this election to be made to allow corporation to preserve S status

https://www.taxnotes.com/research/federal/court-documents/court-opinions-and-orders/eighth-circuit-affirms-conviction-filing-false-returns/7k74m

PLR Requested Due to Failure of Beneficiary to File Timely QSST Election

Photo by Aedrian Salazar on Unsplash

- PLR 202421005, May 24, 2025
  - Beneficiary did not timely make a QSST election
  - As such, the corporation's S status was terminated
  - Taxpayer was not aware of this fact, so continued to issue K-1s as if there was still a valid S election and all parties reported income in the amounts that would have been reported if the election had been made
  - Taxpayer applied for a PLR and IRS greed to treat this as an inadvertent termination

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PLR Requested Due to Failure of Beneficiary to File Timely QSST Election

Photo by Aedrian Salazar on Unsplash

- PLR 202421005, May 24, 2025
  - Problem is the cost of the PLR
    - User fee to obtain the PLR
    - Also tends to require a lot of professional assistance
  - We've seen a significant number of these requests recently
    - Likely original attorney no longer involved with the estate
    - Heirs seem unaware of why the terms are in the trust

Eighth Circuit Affirms Conviction of Tax Preparer on Charges of Willfully Filing False Returns

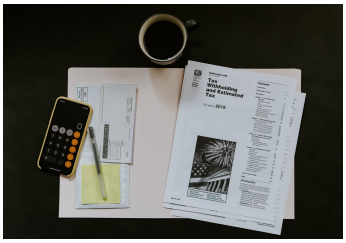

Photo by Kelly Sikkema on Unsplash

- *United States v. Mator*, CA-8, Docket No. 23-2258, May 23, 2024
  - What got the IRS's attention was preparer was routing tax refunds to his own account
  - But found other red flags, including a pattern of unreimbursed business expenses and refundable education credits.
  - Example was a return for a couple where he listed $26,000 in business expenses and an education credit, even though neither of them was in college.

https://www.taxnotes.com/research/federal/court-documents/court-opinions-and-orders/eighth-circuit-affirms-conviction-filing-false-returns/7k74m

Eighth Circuit Affirms Conviction of Tax Preparer on Charges of Willfully Filing False Returns

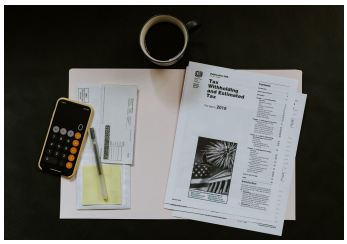

Photo by Kelly Sikkema on Unsplash

- *United States v. Mator*, CA-8, Docket No. 23-2258, May 23, 2024
  - Preparer claimed there was no evidence he had willfully misrepresented anything
  - Court of Appeals found jury reasonably inferred he had
    - One couple said he never asked about their expenses nor looked at receipts
    - Admitted in another case where he had adjusted numbers to get the result he did that it was OK because he had been doing it for years

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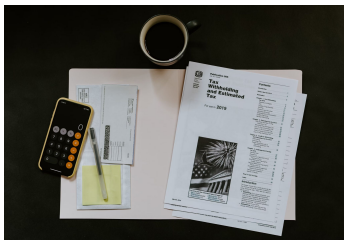

Photo by Kelly Sikkema on Unsplash

- *United States v. Mator*, CA-8, Docket No. 23-2258, May 23, 2024
  - Appellate panel refused to overturn the conviction
  - Just because something has been done for years and never questioned by the IRS does not mean it's correct and that the IRS will never question item

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Letters from Appeals Did Not Extend Time for Taxpayer to File Suit Challenging Denial of Refund

Photo by Nathan Dumlao on Unsplash

- *Moy v. United States*, USDC ND Calif, Docket No. 5:23-CV-03151, May 21, 2024
  - Case looks at the deadline for filing a suit for refund under IRC §6532
  - In this case the taxpayer filed a claim for a refund of foreign taxes that related to a return that the IRS found she failed to timely file
    - The tax had been assessed in 2011 for 2008 tax year
    - Claim for refund filed in 2018
    - IRS denied the claim as time barred

https://www.taxnotes.com/research/federal/court-documents/court-opinions-and-orders/irs-letters-didnt-extend-limitations-period-refund-suit-dismissed/7k70w

Letters from Appeals Did Not Extend Time for Taxpayer to File Suit Challenging Denial of Refund

IRC §6532

(a) Suits by taxpayers for refund.

(1) General rule. No suit or proceeding under section 7422(a) for the recovery of any internal revenue tax, penalty, or other sum, shall be begun before the expiration of 6 months from the date of filing the claim required under such section unless the Secretary renders a decision thereon within that time, nor after the expiration of 2 years from the date of mailing by certified mail or registered mail by the Secretary to the taxpayer of a notice of the disallowance of the part of the claim to which the suit or proceeding relates.

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Letters from Appeals Did Not Extend Time for Taxpayer to File Suit Challenging Denial of Refund

Photo by Nathan Dumlao on Unsplash

- *Moy v. United States*, USDC ND Calif, Docket No. 5:23-CV-03151, May 21, 2024
  - IRS denial of the claim took place on August 1, 2018
  - Taxpayer filed a protest letter with IRS Appeals office in November 2019
  - Appeals responded
    - Twice to indicate it was looking into the matter and would respond within 60 days (December 2019 and February 2020)
    - In January 2021 responded they had denied the Appeal because she had failed to file suit timely

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Letters from Appeals Did Not Extend Time for Taxpayer to File Suit Challenging Denial of Refund

IRC §6532

(a)…

(2) Extension of time. The 2-year period prescribed in paragraph (1) shall be extended for such period as may be agreed upon in writing between the taxpayer and the Secretary.

…

(4) Reconsideration after mailing of notice. Any consideration, reconsideration, or action by the Secretary with respect to such claim following the mailing of a notice by certified mail or registered mail of disallowance **shall not operate to extend the period within which suit may be begun.**

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Letters from Appeals Did Not Extend Time for Taxpayer to File Suit Challenging Denial of Refund

Photo by Nathan Dumlao on Unsplash

- *Moy v. United States*, USDC ND Calif, Docket No. 5:23-CV-03151, May 21, 2024
  - Taxpayer argues that she should be allowed to file suit based on equitable tolling
  - But opinion finds that it doesn't matter if this exact fact pattern is or is not subject to equitable tolling because **Congress explicitly blocked the use of this reason to extend the statute** with the language at IRC §6532(a)(4)
  - Thus she could not file suit to challenge the IRS denial of her claim for refund

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Taxpayer Had Done All the IRS Required to Elect Early Use of BBA Audit Procedures

Photo by Wesley Tingey on Unsplash

- *SN Worthington Holdings LLC v. Commissioner*, 162 T.C. No. 10, May 22, 2024
  - When the BBA partnership examination provisions were added, taxpayers were allowed to opt into the use of those procedures for exams for years prior to the effective date of those rules
  - Congress provided that the IRS would provide the rules for making such an election, which were provided at Treas. Reg. §301.9100-22(b)(2)
  - A statement was required as provided in the regulations with a key provision for this case found at 301.9100-22(b)(2)(ii)(E)(4)

https://www.taxnotes.com/research/federal/court-documents/court-opinions-and-orders/tax-court-finds-partnership-elected-out-tefra-fpaa-invalid/7k72n

Taxpayer Had Done All the IRS Required to Elect Early Use of BBA Audit Procedures

Reg. §301.9100-22(b)(2)(ii)(E)(4)

(E) The following representations --

...

(4) The partnership has sufficient assets, and reasonably anticipates having sufficient assets, to pay a potential imputed underpayment with respect to the partnership taxable year that may be determined under subchapter C of chapter 63 of the Internal Revenue Code as amended by the BBA;

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Taxpayer Had Done All the IRS Required to Elect Early Use of BBA Audit Procedures

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- *SN Worthington Holdings LLC v. Commissioner*, 162 T.C. No. 10, May 22, 2024
  - Taxpayer was notified of an examination of its 2016 partnership return - by default it would be conducted under the TEFRA rules
  - Within 30 days of notice, the taxpayer submitted Form 7036 to elect to have this exam conducted under the BBA provisions
  - The IRS, after reviewing the tax return, stated it did not believe that the partnership had sufficient assets to pay any tax due

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Taxpayer Had Done All the IRS Required to Elect Early Use of BBA Audit Procedures

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- *SN Worthington Holdings LLC v. Commissioner*, 162 T.C. No. 10, May 22, 2024
  - The IRS gave the taxpayer 30 days to provide evidence that the partnership could pay any imputed underpayment
  - The taxpayer did not respond, so the IRS notified the taxpayer that the agency had rejected the election
  - The IRS completed the exam and issued TEFRA FPAA notices

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Taxpayer Had Done All the IRS Required to Elect Early Use of BBA Audit Procedures

Photo by Wesley Tingey on Unsplash

- *SN Worthington Holdings LLC v. Commissioner*, 162 T.C. No. 10, May 22, 2024
  - The taxpayer filed a Motion to Dismiss and Declare Final Partnership Administrative Adjustment Invalid arguing the FPAA issued was invalid
  - Tax Court agreed with the taxpayer as they had properly elected under the IRS's own regulations to use the BBA examination rules
  - The regulations only required the representation to be made and did not provide any mechanism for the IRS to reject the election unless proof of the correctness of the statements was provided

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Photo by Wesley Tingey on Unsplash

- *SN Worthington Holdings LLC v. Commissioner*, 162 T.C. No. 10, May 22, 2024
  - Court also notes that the BBA procedures have mechanisms that could be used if a partnership was found unable to pay the imputed payment, so allowing such an election did not frustrate the purposes of the BBA
  - If there is doubt about the meaning of a regulation, it will be interpreted against the IRS

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Taxpayer Had Done All the IRS Required to Elect Early Use of BBA Audit Procedures

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- *SN Worthington Holdings LLC v. Commissioner*, 162 T.C. No. 10, May 22, 2024
  - Also found equitable estoppel did not apply here (the theory that the partnership had unfairly allowed the IRS to continue the worthless TEFRA exam)
    - Did find that the partnership had conducted a misleading silence
    - However the IRS had all necessary information to determine if the BBA election was valid
    - Went to a question of law, not a question of fact

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Taxpayer Had Done All the IRS Required to Elect Early Use of BBA Audit Procedures

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- *SN Worthington Holdings LLC v. Commissioner*, 162 T.C. No. 10, May 22, 2024
  - Although not raised here (since it was not relevant to the validity of the election), taxpayers should note the representations were signed under penalties of perjury that there true as far as the person signing the document knew

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