

United States Tax Court

T.C. Memo. 2026-90

TOSCANO HOLDINGS, LLC, TOSCANO INVESTMENTS, LLC,
TAX MATTERS PARTNER,
Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent

Docket No. 12214-20.

Filed September 22, 2026.

Ronald A. Levitt, Gregory P. Rhodes, Michelle A. Levin, and Emily C. Ellis, for petitioner.

Edwin B. Cleverdon, Eric M. Heller, Zachary T. King, Sarah C. Nadel, and Monica D. Polo, for respondent.

MEMORANDUM OPINION

PARIS, *Judge*: This case involves a charitable contribution deduction that Toscano Holdings, LLC (Toscano), claimed for a 2016 donation of a conservation easement under section 170.¹

Presently before the Court is petitioner's Renewed Motion to Invalidate the Final Partnership Administrative Adjustment (Renewed Motion), filed December 5, 2024, and a Declaration of Michelle Levin in Support of the Renewed Motion. Respondent filed a Response to the Renewed Motion and Incorporated Memorandum of Law on March 3,

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

[*2] 2025. On April 16, 2025, petitioner filed a Reply to Response to the Renewed Motion and Incorporated Memorandum of Law.

In the Renewed Motion, Toscano Investments, LLC, Toscano's tax matters partner and petitioner in this case, argues that the Court should set aside and hold invalid the Notice of Final Partnership Administrative Adjustment (FPAA) issued to Toscano for the tax year ending December 30, 2016. For the reasons set forth below, the Court will deny the Renewed Motion.

Background

The following facts are derived from the parties' pleadings, Stipulation of Facts, motion papers, and Exhibits attached thereto. They are stated solely for the purpose of deciding the Renewed Motion 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).

Toscano is a Tennessee limited liability company that maintained its principal place of business in Georgia when the Petition was filed. Toscano is classified as a partnership for federal income tax purposes and is subject to proceedings under the Tax Equity and Fiscal Responsibility Act of 1982.²

On December 30, 2016, Toscano donated a conservation easement encumbering approximately 380 acres of real property in Roane County, Tennessee, to the Foothills Land Conservancy. On its Form 1065, U.S. Return of Partnership Income, for the tax year ending December 30, 2016 (2016 Return), Toscano claimed a deduction for a noncash charitable contribution for its donation of the easement. Relying on an appraisal by Clay Weibel, Toscano claimed the value of the easement was \$28.1 million and asserted that the highest and best use of the property immediately before the easement was mixed-use residential property. The Internal Revenue Service (IRS) received Toscano's 2016 Return on September 18, 2017.

I. Examination of Toscano's 2016 Return

Respondent selected Toscano's 2016 Return for examination. Revenue Agent Rick Skinner (RA Skinner) was assigned to perform the

² Before its repeal, the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub. L. No. 97-248, §§ 401–407, 96 Stat. 324, 648–71, governed the tax treatment and audit procedures for many partnerships, including Toscano.

[*3] examination. Among the primary issues during the examination was the value of the conservation easement. RA Skinner obtained a Limited Scope Appraisal Review (With an Opinion of Value) from a fellow IRS employee, Peter S. Crane, a Senior Appraiser. Upon review of the appraisal attached to Toscano's 2016 Return, Mr. Crane valued the conservation easement at \$6.7 million. His appraisal review is dated September 6, 2019.

On July 1, 2019, RA Skinner faxed petitioner's attorneys, Mr. Levitt and Mr. Rhodes, explaining that he would be soliciting an extension of the period of limitations on assessment. He explained that to preserve Toscano's opportunity to have the dispute reviewed by the IRS Independent Office of Appeals (Appeals), there needed to be 13 months remaining in the period of limitations. On July 15, 2019, RA Skinner sent a period of limitations extension package to petitioner and its attorney Mr. Rhodes. The package included Form 872-P, Consent to Extend Time to Assess Tax Attributable to Partnership Items; Publication 1035, Extending the Tax Assessment Period; and Letter 907, requesting petitioner's response within 14 days.

On August 6, 2019, having received no response from petitioner or its attorneys, RA Skinner sent a followup letter explaining that the IRS had not received a signed period of limitations extension form and to contact him if there were any questions. On August 26, 2019, Mr. Levitt sent a letter to RA Skinner, which stated, in relevant part, the following:

I wanted to reach out and let you know that after careful consideration, the Taxpayer has made the decision not to extend the statute of limitations as requested by your office. I believe this decision means that you will now take steps to close the case and issue an FPAA. If that is not correct, please let me know.

Mr. Levitt's letter also stated that Toscano would not be responding to the then-pending IDR because of the decision not to extend the period of limitations. From that point forward, neither Toscano nor its representatives participated in the exam.

On January 15, 2020, RA Skinner issued a summary report to petitioner regarding the audit of Toscano's 2016 Return, proposing certain adjustments. The summary report offered petitioner the opportunity to attend a closing conference, which would be scheduled

[*4] not less than 30 days from the date of the letter. RA Skinner requested that petitioner contact him within seven days from the date of the letter, (that is, by January 22, 2020) to schedule a time and date for the closing conference.

After 30 days had elapsed from the date of the summary report, RA Skinner closed the case and sent it to his manager, who in turn forwarded it to the IRS Technical Services Unit for issuance of an FPAA. On February 28, 2020, approximately one month after the January 22 deadline, Mr. Levitt contacted RA Skinner and requested a closing conference. RA Skinner advised him that the case file had been submitted to the Technical Services Unit and was no longer under his control.

On March 16, 2020, Mr. Levitt sent RA Skinner a signed Form 872-P and a letter stating that petitioner “is providing this signed extension because it would like to exercise its appeal rights and file a written protest.” In response, RA Skinner reminded Mr. Levitt of the letter dated August 26, 2019, in which Toscano had declined the opportunity to extend the period of limitations and acknowledged that an FPAA would be issued. RA Skinner reiterated to Mr. Levitt that the case had been submitted to the Technical Services Unit and that an FPAA would be issued. On July 16, 2020, respondent issued the FPAA to petitioner.

II. *Tax Court Petition and First Referral to Appeals*

On October 13, 2020, petitioner filed a Petition for Readjustment of Partnership Items Under Code Section 6226. Respondent filed his Answer on January 5, 2021. In March 2021 respondent referred the case to Appeals for potential settlement. On February 24, 2022, Toscano’s appraiser, Clay Weibel, was federally indicted.³

In August 2022 Appeals Officer Marion Tate (AO Tate) informed petitioner’s counsel that she had been assigned to petitioner’s case. AO Tate scheduled an Appeals conference for November 17, 2022. Because of funding issues, the Appeals engineer assigned to determine the value of the easement was unable to visit the property before the November 17, 2022, conference. On October 27, 2022, petitioner’s counsel sent an email to AO Tate confirming that the November 17 conference had been

³ Specifically, Mr. Weibel was named as a defendant in the First Superseding Indictment filed February 24, 2022, in the case *United States v. Lewis*, No. 21-cr-00231 (N.D. Ga.).

[*5] rescheduled to accommodate a site visit. That same day AO Tate responded: “I am confirming that the conference for Thursday, November 17 @ 12:00pm EST has been cancelled. We will follow up with you as soon as possible.”

On February 22, 2023, Alan D. Redstone, the Appeals Team Manager, sent a letter to petitioner’s counsel, Mr. Rhodes, informing him that Appeals could not consider the case because of the relationship or potential impact to an ongoing criminal matter and that the case was being returned to the Office of Chief Counsel.

III. *First Motion to Invalidate Notice of Final Partnership Administrative Adjustment*

On April 25, 2023, in response to Mr. Redstone’s letter, petitioner filed a Motion to Invalidate the Final Partnership Administrative Adjustment (First Motion). Concurrently with the filing of the First Motion, petitioner filed a Declaration of Michelle Levin in Support of the First Motion, which was later supplemented and redacted. On June 15, 2023, respondent filed a Response to the First Motion and a Declaration of Rick Skinner in Support of Response to the First Motion. On June 23, 2023, respondent filed a Declaration of Marion S. Tate in Support of Response to the First Motion. The Court heard oral arguments on petitioner’s First Motion on June 20, 2023. On August 28, 2023, petitioner filed a Reply to Respondent’s Response to the First Motion, along with a Declaration of Michelle Levin in Support thereof.

The jury in Mr. Weibel’s criminal case acquitted him on all charges on September 22, 2023. In view of this development, respondent returned petitioner’s case to Appeals for consideration. On February 6, 2024, the parties filed a Joint Status Report in which they represented that respondent had returned petitioner’s case to Appeals on October 5, 2023. During a conference call held on February 21, 2024, the parties agreed that the First Motion should be denied as moot. On February 23, 2024, the Court denied the First Motion as moot without prejudice.

IV. *Appeals Conference*

Following Mr. Weibel’s acquittal, petitioner’s case was reassigned to AO Tate and a settlement conference was scheduled for March 28, 2024. On February 28, 2024, petitioner’s counsel sent AO Tate a letter containing eight exhibits. AO Tate viewed the information contained in the February 28 letter as new information that would need to be sent back to the Examination Division (Exam) for review and comment before

[*6] it could be considered by Appeals, a process that would take approximately 60 days to complete. Petitioner’s counsel disagreed with AO Tate’s assertion that the February 28 letter contained “new information” but acquiesced to sending the case back to Exam to ensure that Appeals considered all of the information provided. IRS Exam Appraiser Thomas McCaughey independently reviewed the “new information” and recommended no change to the IRS’s original valuation.

On June 26, 2024, the IRS issued I.R.S. News Release IR-2024-174, in which it announced that selected taxpayers in IRS Exam who had donated syndicated conservation easements would be receiving a settlement offer.⁴ The settlement offer was also available to nondocketed conservation easement cases in Appeals.

On July 24, 2024, petitioner and Appeals held a settlement conference (July 2024 conference). In attendance were petitioner’s counsel, and for respondent, AO Tate, AO Dubberke, and Appeals Appraiser Steven Warshawsky. During the July 2024 conference Mr. Warshawsky reviewed the valuation issue, and AO Dubberke reviewed litigation hazards. Mr. Warshawsky expressed his belief that the value reached by Exam was too high. AO Dubberke determined that Toscano “had low hazards and the IRS [had] high hazards.” Following the July 2024 conference, Appeals made petitioner a settlement offer.

By letter dated August 7, 2024, petitioner submitted a counteroffer. Included in the counteroffer was a litany of perceived irregularities with the July 2024 conference. Chief among them was that Mr. Warshawsky relied on a valuation that was less than the amount used by Exam and that Appeals did not properly weigh the hazards of litigation. Appeals considered but declined petitioner’s counteroffer. Petitioner filed the Renewed Motion on December 5, 2024.

⁴ Petitioner, in what appears to be a minor typographical error, cites “IR-2014-174.” (Doc. 74). However, the correct News Release is IR-2024-174. That News Release made clear that “[t]he IRS will notify eligible taxpayers by letter,” and “[t]axpayers who don’t receive a letter are not eligible” for the settlement offer. Petitioner has not provided documents showing that the IRS offered this settlement to Toscano.

[*7]

*Discussion*I. *Overview*

Petitioner's Renewed Motion requests that the Court invalidate the FPAA issued to Toscano for the tax year ending December 30, 2016, because Toscano was denied its statutory right to an Appeals hearing under section 7803(e). Petitioner contends that respondent denied Toscano its right to Appeals consideration three times: (1) by not providing Toscano an Appeals hearing before the FPAA was issued; (2) by canceling the Appeals hearing after the FPAA was issued because of Mr. Weibel's then-ongoing criminal matter; and (3) at the July 2024 conference, which petitioner argues was insufficient. Alternatively, petitioner argues that by issuing the FPAA without providing Toscano an Appeals hearing, respondent exceeded his authority under section 7803, and the FPAA is invalid under the Administrative Procedure Act (APA). *See* 5 U.S.C. § 706(2)(A), (C).

Respondent argues that the Motion should be denied because: (1) section 7803(e) does not confer an absolute right to an Appeals hearing; (2) section 7803(e) does not provide a cause of action for judicial review of denied Appeals hearings; (3) the APA does not permit judicial review of agency action that is committed to agency discretion by law; and (4) petitioner had an Appeals hearing that did not result in settlement because the parties were too far apart on valuation.

II. *Section 7803(e)*

In 2019 Congress passed the Taxpayer First Act (TFA), Pub. L. No. 116-25, § 1001(a), 133 Stat. 981, 983 (2019).⁵ The TFA, among other things, added section 7803(e), establishing an IRS Independent Office of Appeals "intended to perform functions similar to those of the current Appeals." H.R. Rep. No. 116-39, pt. 1, at 30 (2019), *as reprinted in* 2020 U.S.C.C.A.N. 169, 175. Section 7803(e)(1) and (2) establishes the IRS Independent Office of Appeals and staffs it with a leader called the Chief of Appeals. Section 7803(e)(3) describes the purposes and duties of Appeals, providing that

⁵ TFA § 1001(e), 133 Stat. at 985, provides that "[e]xcept as provided in [subsection (e)(2), dealing with taxpayer access to case files], the amendments made by this section shall take effect on the date of the enactment of this Act." The TFA was signed into law on July 1, 2019. Accordingly, the requirements of section 7803(e) were in effect at all relevant times.

[*8] [i]t shall be the function of the Internal Revenue Service Independent Office of Appeals to resolve Federal tax controversies without litigation on a basis which—

(A) is fair and impartial to both the Government and the taxpayer,

(B) promotes a consistent application and interpretation of, and voluntary compliance with, the Federal tax laws, and

(C) enhances public confidence in the integrity and efficiency of the Internal Revenue Service.

Section 7803(e)(4) provides: “The resolution process described in paragraph (3) shall be generally available to all taxpayers,” and section 7803(e)(5) sets forth certain limitations on the designation of certain cases as not eligible for referral to Appeals.

Section 7803(e)(5), titled “Limitation on designation of cases not eligible for referral to Independent Office of Appeals,” provides, in relevant part:

(A) In general.—If any taxpayer which is in receipt of a notice of deficiency authorized under section 6212 requests referral to the Internal Revenue Service Independent Office of Appeals and such request is denied, the Commissioner of Internal Revenue shall provide such taxpayer a written notice which—

(i) provides a detailed description of the facts involved, the basis for the decision to deny the request, and a detailed explanation of how the basis of such decision applies to such facts, and

(ii) describes the procedures prescribed under subparagraph (C) for protesting the decision to deny the request.^[6]

⁶ The Court notes that the accompanying regulations to section 7803 were not in effect at times relevant to this case. See Treas. Reg. §§ 301.7803-2 and -3. The regulations were first presented in a Notice of Proposed Rulemaking and Notice of Public Hearing on Proposed Rulemaking in 2022. 87 Fed. Reg. 55,934 (Sep. 13, 2022). These regulations did not become final until January 15, 2025, and were effective for requests for Appeals consideration received on or after February 14, 2025. See T.D. 10030, 2025-11 I.R.B. 1066. Because the proposed regulations were not binding on the parties, and the final regulations did not apply at the times petitioner requested

[*9] III. *Analysis*

Petitioner argues that Toscano was denied its right to “proper Appeals consideration” under section 7803(e) and asks the Court to take the extraordinary step of invalidating the FPAA. Petitioner divides the alleged violations into three distinct issues, whether (1) petitioner was improperly denied an Appeals hearing before the issuance of the FPAA; (2) after issuance of the FPAA, the July 2024 conference was so deficient as to constitute an improper denial of an Appeals hearing; and (3) the FPAA may be set aside under the APA.

A. *Denial of Appeals Hearing During Exam and Before the FPAA*

Petitioner argues that RA Skinner’s refusal to accept Toscano’s signed Form 872–P in March 2020 was an improper denial of a request for Appeals consideration under section 7803(e). Petitioner contends that because section 7803(e)(4) provides that the Appeals process shall generally be available to all taxpayers, and section 7803(e)(5) instructs the IRS to provide a detailed explanation when a request for Appeals consideration is denied, the FPAA issued to Toscano is invalid because RA Skinner refused to accept Toscano’s Form 872–P and did not provide a reason in compliance with section 7803(e)(5)(A).

Petitioner essentially asks the Court to rewrite the past; the Court declines the invitation. For the reasons outlined below, the Court finds that RA Skinner’s refusal to accept Toscano’s request for Appeals consideration did not violate section 7803(e)(5).

To begin with, petitioner’s reliance on section 7803(e)(5)(A) is wholly misplaced. That provision applies “[i]f any taxpayer which is in receipt of a notice of deficiency authorized under section 6212 requests referral to the Internal Revenue Service Independent Office of Appeals and such request is denied.” At the time RA Skinner declined to accept Toscano’s signed Form 872–P, petitioner had not received any Notice of Deficiency under section 6212.

Furthermore, a proceeding in this Court for readjustment of partnership items under section 6226 is a proceeding de novo, and the Court’s determination is based on the merits and not on any administrative proceedings before the issuance of the FPAA. *See*

Appeals consideration, the Court will not consider them in deciding petitioner’s Renewed Motion.

[*10] *Greenberg's Express, Inc. v. Commissioner*, 62 T.C. 324, 327–28 (1974). It is a longstanding rule that, absent substantial evidence of unconstitutional conduct (which petitioner has not alleged, much less produced evidence of), this Court will not look behind an FPAA or a deficiency notice to examine the evidence used, the propriety of the Commissioner's motives, or the administrative policy or procedure involved in making his determinations. *Greenberg's Express, Inc.*, 62 T.C. at 327–28; *Genecure, L.L.C. v. Commissioner*, T.C. Memo. 2022-52, at *8 n.23.

RA Skinner offered petitioner the opportunity to extend the period of limitations on assessment and preserve Toscano's opportunity for pre-FPAA Appeals consideration. Petitioner declined that request, so RA Skinner moved the case forward for issuance of the FPAA. RA Skinner's actions took place before respondent issued the FPAA to Toscano. Using RA Skinner's pre-FPAA actions to invalidate the FPAA is exactly the type of remedy *Greenberg's Express* foreclosed. The TFA neither abrogated the rule set forth in *Greenberg's Express*, nor amended section 6224 to require an Appeals hearing as a necessary precondition to issuing an FPAA, and the Court will not read one into the statute.

Petitioner relies on *SN Worthington Holdings LLC v. Commissioner*, 162 T.C. 228 (2024), in an effort to show that RA Skinner's actions were per se outside the scope of section 7803(e). But *SN Worthington* is inapplicable here. In that case, the taxpayer validly elected into the procedures set forth in the Bipartisan Budget Act of 2015 (BBA), Pub. L. No. 114-74, 129 Stat. 584, but the Commissioner continued the examination under the TEFRA process and ultimately issued an FPAA (TEFRA) rather than a Notice of Final Partnership Adjustment (BBA). The Court held that the Commissioner's actions exceeded the requirements under BBA § 1101(g)(4), 129 Stat. at 638, noting that "the Commissioner may not add ad hoc additional requirements" beyond what Congress required. *SN Worthington*, 162 T.C. at 235.

That is far from what happened here. RA Skinner's request for a period of limitations extension was not an "ad hoc additional requirement." *Id.* Neither was his refusal to accept Toscano's signed Form 872-P months after he requested it. The fact that the case had been transferred to IRS Technical Services for issuance of the FPAA is simply a function of the audit process itself, not a calculated decision by RA Skinner to preclude Toscano from obtaining Appeals review. If anything, it appears that petitioner is trying to link the facts that RA

[*11] Skinner was the revenue agent in both *SN Worthington* and Toscano's case. That connection is irrelevant to the relief petitioner seeks.

RA Skinner completed his examination of Toscano's 2016 Return, provided petitioner with a summary report, and gave petitioner a deadline by which to request a closing conference. Petitioner did not respond. When petitioner finally responded several weeks later, RA Skinner told petitioner that because the case had moved out of Exam to Technical Services, the case was no longer under his control. The Court fails to see how this series of events renders the FPAA invalid.

B. *Post-FPAA Violations*

Petitioner argues that respondent's actions after the FPAA was issued rise to a level requiring the Court to invalidate that FPAA. According to petitioner, respondent violated section 7803(e) on two occasions after the FPAA was issued: once by removing Toscano's case from Appeals after it had already been assigned to Appeals because of Mr. Weibel's then-ongoing criminal case; and a second time by improperly conducting the July 2024 conference. Neither argument convinces the Court to invalidate the FPAA.

1. *Removal from Appeals Because of Mr. Weibel's Criminal Case*

As the Court has already explained, *see* Opinion Part III.A above, section 7803(e)(5) does not apply here and therefore offers petitioner no aid. Moreover, any defects that may have occurred during that period were rendered moot when respondent allowed petitioner's case to return to Appeals in October 2023, and the Court will not address that matter further.⁷

⁷ Petitioner also asserts that "[s]ince the First Motion to Invalidate, Petitioner's counsel discovered additional evidence of Respondent violating I.R.C. § 7803," alleging that Appeals employees were instructed not to work on cases in which Mr. Weibel prepared the taxpayer's appraisal, to cancel Appeals conferences for such cases, and to withhold the reasons for doing so from the taxpayers' representatives." Whatever the truth of petitioner's allegations, any harm allegedly caused pertains to petitioner's first referral to Appeals and was rendered moot when respondent returned the case to Appeals in October 2023.

[*12] 2. *The July 24, 2024, Appeals Conference*

Next, petitioner argues that Toscano was not afforded a proper Appeals hearing at the July 2024 conference. Relying on section 7803(e)(3), petitioner says the conference was not “fair and impartial” to both parties, it did not “promote[] a consistent application” of Federal tax law, and it did not “enhance[] public confidence in the integrity and efficiency” of the IRS.

Specifically, petitioner raises several issues with the conduct of the July 2024 conference. Petitioner argues that it was not provided a “fair and impartial” hearing under section 7803(e)(3)(A) because (1) Mr. Warshawsky relied on improper evidence when reviewing Exam’s valuation opinion; (2) the offer presented to Toscano was not the same as that being offered in other conservation easement cases; and (3) taken together, the overall process from Exam through the July 2024 conference does not enhance public confidence in the IRS.

Petitioner further argues that the July 2024 conference did not promote a consistent application of, and voluntary compliance with, the federal tax laws. *See* § 7803(e)(3)(B). Petitioner takes issue with the valuation determination, both its analysis and its result, and objects that Appeals did not offer petitioner the same settlement available to taxpayers currently under audit, including those in Appeals.⁸

Petitioner, essentially, asks the Court to review the sufficiency of the Appeals hearing it was provided. Section 7803 does not provide that remedy. Petitioner cites no statute establishing the Court’s authority to do so, the standard or scope of review if the Court were to undertake such an analysis, or what the appropriate remedy would be. If petitioner seeks to have the Court review different comparable properties to reach a valuation for the underlying easement, trial is the appropriate remedy.

At their core, petitioner’s arguments amount to mere complaints over not getting a preferred result at the July 2024 conference. To take the extreme step of invalidating the FPAA, the Court requires more. To the extent petitioner is dissatisfied with the July 2024 conference, the appropriate remedy is that which petitioner has already undertaken: File a petition in this Court for redetermination based on a *de novo*

⁸ The Court further notes that the settlement offer in News Release IR-2024-174 was made public on June 26, 2024, a date well after Mr. Levitt’s March 16, 2020, letter expressing a desire to exercise petitioner’s Appeals rights. Even if the request had been timely, the settlement offer would not have been available to petitioner.

[*13] review of the evidence. Petitioner points to no provision that expands the Court’s review process beyond what existed before the enactment of the TFA.

C. *Administrative Procedure Act*

In a final attempt to invalidate the FPAA, petitioner turns to the APA. Petitioner contends that “[a]t every avenue, agency action was taken to either keep Toscano from Appeals or to keep Appeals from independently and seriously seeking to resolve” this case. Petitioner invokes the APA’s “arbitrary and capricious” provisions and argues that the issuance of the FPAA is the final agency action that is subject to the APA. *See* 5 U.S.C. § 706(2).

Petitioner says the July 2024 conference “was not a remedy at all” because respondent had already violated section 7803 on two different occasions. Presumably petitioner is referring to (1) RA Skinner’s refusal to accept the signed Form 872–P in March 2020 and (2) Appeals’ decision to send the case back to the Office of Chief Counsel because of the relationship with Mr. Weibel’s criminal case. The facts underlying these arguments have been addressed above, and petitioner’s APA challenge fares no better.

Under the APA, claims may be brought against an agency for alleged wrongs, unless “statutes preclude judicial review; or . . . agency action is committed to agency discretion by law.” 5 U.S.C. § 701(a). Additionally, the challenged agency action must be “final agency action for which there is no other adequate remedy in a court.” 5 U.S.C. § 704. 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 suggests that legal consequences might flow from agency action if it “alter[s] the legal regime to which the action agency is subject.” *Id.*

This Court has long “made clear, back to the earliest days of TEFRA litigation,” that “[t]he FPAA is to the litigation of partnership

[*14] items . . . what the statutory notice of deficiency is to tax controversies.” *Bedrosian v. Commissioner*, 143 T.C. 83, 107 (2014) (quoting *Clovis I v. Commissioner*, 88 T.C. 980, 982 (1987)), *aff’d*, 940 F.3d 467 (9th Cir. 2019). Similarly, “following an IRS examination of a taxpayer’s return, the ‘consummation of the agency’s decisionmaking process’ is reflected in the notice of deficiency.” *Comput. Scis. Corp. v. Commissioner*, 165 T.C. 119, 135 (2025) (quoting *Bennett*, 520 U.S. at 178). The Court will accept, without deciding, that, like the Notice of Deficiency, the FPAA is the “consummation” of the decisionmaking process under TEFRA procedures. With that assumption in mind, the Court nonetheless sees no reason to accept petitioner’s APA arguments in this case.

The refusal to accept Toscano’s Form 872–P does not render the FPAA invalid under the APA. Given the facts of this case, namely Toscano’s unambiguous statements in August 2019 refusing to extend the period of limitations on assessment and its attempt to change its mind nearly six months later, the Court sees no reason to find the lack of Appeals consideration before issuance of the FPAA as grounds to invalidate the FPAA. Doing so would effectively allow petitioner to move to dismiss this case for lack of jurisdiction because it did not receive its desired result at the July 2024 conference.

Likewise, the decision by Appeals to return the case to the Office of Chief Counsel is not enough to invalidate the FPAA. First, under the assumption just described, this removal occurred after the final agency action. Second, in any event, whatever harm was caused by that decision was rendered moot by the July 2024 conference. Once more, the Court declines to treat respondent’s actions after issuance of the FPAA (removing the case from Appeals because of Mr. Weibel’s criminal matter) as grounds to invalidate the FPAA.

IV. *Conclusion*

In conclusion, the Court will deny petitioner’s Renewed Motion to Invalidate the Final Partnership Administrative Adjustment as set forth herein.

The Court has considered all arguments made by the parties, and to the extent they are not addressed herein they are considered unnecessary, moot, irrelevant, or otherwise without merit.

An appropriate order will be issued.