No. 23-125

In the Supreme Court of the United States

SEAVIEW TRADING, LLC, AGK INVESTMENTS, LLC, TAX MATTERS PARTNER, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals correctly determined that the regulatory requirement that a "return of a partnership must be filed with the service center prescribed in the relevant * * * instructions to the form," 26 C.F.R. 1.6031(a)-1(e)(1) (2001), applies equally to the filing of both timely and untimely partnership returns.

ADDITIONAL RELATED PROCEEDINGS

United States Tax Court:

Seaview Trading, LLC v. *Commissioner*, No. 1744-11 (Mar. 11, 2015)

United States Court of Appeals (9th Cir.):

Seaview Trading, LLC v. *Commissioner*, No. 15-71330 (June 7, 2017)

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OPINIONS BELOW

The opinion of the en banc court of appeals (Pet. App. 1a-33a) is reported at 62 F.4th 1131. A prior panel opinion (Pet. App. 35a-112a) is reported at 34 F.4th 666. The opinion of the Tax Court (Pet. App. 117a-125a) is not published in the Tax Court Reports but is available at 2019 WL 4415203.

JURISDICTION

The judgment of the court of appeals was entered on March 10, 2023. On May 10, 2023, Justice Kagan extended the time within which to file a petition for a writ of certiorari to and including August 7, 2023, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Under the Internal Revenue Code, a partnership "as such" is not subject to federal income taxes. 26 U.S.C. 701. Instead, "[p]ersons carrying on business as partners" are "liable for income tax only in their separate or individual capacities." *Ibid.* To effectuate that pass-through treatment, a partnership is required to file an annual information return with the Internal Revenue Service (IRS), reporting certain information about the partnership's income, deductions, and other tax items, as well as each partner's "distributive share" of the entity's tax items. 26 U.S.C. 6031(a). The annual information return is known as Form 1065. Pet. App. 6a. A partnership must also provide each partner with a schedule showing that partner's distributive share of the partnership's tax items. 26 U.S.C. 6031(b). Each partner must then report his or her share of the partnership's tax items on the partner's individual tax return. 26 U.S.C. 702, 6222(a).

This case concerns the limitations period for assessing taxes owed as a result of partnership items. As a general rule, the IRS has three years "after [a] return [is] filed" within which to assess any taxes due for that tax year. 26 U.S.C. 6501(a). If the taxpayer "fail[s] to file a return," the IRS may assess taxes "at any time." 26 U.S.C. 6501(c)(3). During the 2001 tax year at issue here, the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub. L. No. 97-248, 96 Stat. 324, provided that the three-year period for assessing taxes owed by a person "attributable to any partnership item * * * shall not expire" until three years after the later of "the date on which the partnership return for such taxable year was filed" or "the last day for filing such return." 26 U.S.C. 6229(a) (2000). Thus, for assessing

any taxes a person owed as a result of partnership items, the IRS had three years from the date of filing of the person's individual return, except that the assessment period was extended ("shall not expire") until at least three years after the relevant partnership return was filed. *Ibid.* TEFRA also contained its own provision addressing a partnership's failure to file a return: "In the case of a failure by a partnership to file a return for any taxable year, any tax attributable to a partnership item (or affected item) arising in such year may be assessed at any time." 26 U.S.C. 6229(c)(3) (2000).[1]

The tolling provision in TEFRA ran from the later of the date on which the partnership return was due or the date on which it was "filed." 26 U.S.C. 6229(a) (2000). The Code does not define the term "filed," but it directs the Secretary of the Treasury to issue regulations prescribing "the time for filing any return" and "the place for the filing of any return." 26 U.S.C. 6071(a), 6091(a); see 26 U.S.C. 6230(i) (2000) (analogous provision in TEFRA). For the 2001 tax year, the following regulation governed the place and time for filing a partnership return:

> (e) *Procedural requirements*—(1) *Place for filing*. The return of a partnership must be filed with the service center prescribed in the relevant IRS revenue procedure, publication, form, or instructions to the form (see § 601.601(d)(2)).
>
> (2) *Time for filing*. The return of a partnership must be filed on or before the fifteenth day of the

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[1] In 2015, Congress repealed the relevant provisions of TEFRA for the 2018 tax year onwards. See Bipartisan Budget Act of 2015, Pub. L. No. 114-74, § 1101(a) and (g), 129 Stat. 625, 638.

> fourth month following the close of the taxable year of the partnership.

26 C.F.R. 1.6031(a)-1(e) (2001).

2. Petitioner Seaview Trading, LLC, is a limited liability company created in 2001 with its principal place of business in California. Pet. App. 118a. For federal-income-tax purposes, petitioner was classified as a partnership. *Id.* at 118a-119a. "During the year in issue [petitioner] was owned 99.15%" by another pass-through entity, AGK Investments, LLC, which in turn was owned by Robert A. Kotick, the CEO of Activision. *Id.* at 119a; see C.A. E.R. 231, 249. Kotick's father owned the remaining 0.85% interest in petitioner through a third pass-through entity. Pet. App. 119a.

In 2001, petitioner participated in a tax shelter that it claimed generated a loss of $35,496,542. Pet. App. 119a; see *id.* at 6a, 40a. The claimed $35 million loss was allocated to petitioner's partners based on their respective shares: 99.15% to Robert Kotick and 0.85% to his father. *Id.* at 119a & n.6. Petitioner's 2001 partnership return (Form 1065) was due on April 15, 2002. *Id.* at 7a. As quoted above, an IRS regulation required the Form 1065 to "be filed with the service center prescribed" in the form's filing instructions. 26 C.F.R. 1.6031(a)-1(e) (2001). For California-based partnerships, the designated place for filing Form 1065 was an IRS service center in Ogden, Utah. Pet. App. 7a. "Thus, to file its 2001 return on time, [petitioner] was required to send its return to the Ogden Service Center by April 15, 2002." *Ibid.*

The manager of the tax-shelter transaction prepared a Form 1065 for petitioner for the 2001 tax year and sent the form to Kotick to review "around the end of March or the beginning of April" 2002, before the April

15 deadline. C.A. E.R. 69; see *id.* at 67-69, 222. Kotick's lawyer instructed him not to send the return to the IRS at that time because the lawyer wanted to "wait[] to get a final opinion letter" from Sidley Austin blessing the tax shelter. *Id.* at 70, 87. Kotick claims that he later gave a signed copy of petitioner's 2001 Form 1065 to his personal accountant, in June or July 2002, when the accountant was at Kotick's home to obtain his signature on other tax documents. *Id.* at 72-74. Although Kotick's personal accountant was not involved in the preparation of petitioner's return, the accountant allegedly agreed as a courtesy to Kotick to mail petitioner's return to the IRS in the same envelope as another return that the accountant had prepared. *Ibid.*; see *id.* at 166-169, 187. The envelope allegedly containing both returns was mailed to the Ogden service center on July 3, 2002. Pet. App. 119a; see C.A. E.R. 221. The IRS has no record of ever having received petitioner's 2001 Form 1065 at the Ogden service center. Pet. App. 7a.

"In July 2005, an IRS revenue agent informed [petitioner] that the agency had no record of receiving the partnership's return for the 2001 tax year." Pet. App. 7a. The agent asked petitioner to provide various items of information, including any "retained copies of any 2001 return that [petitioner] claimed to have filed as well as proof of mailing." *Id.* at 7a-8a. In September 2005, Kotick's accountant faxed the revenue agent copies of a 2001 Form 1065 for petitioner—claiming a $35 million loss from the tax-shelter transaction—and a certified mail receipt for the envelope in which the accountant had allegedly mailed petitioner's return to the Ogden service center in July 2002. *Id.* at 8a. The fax was sent to the "revenue agent's office in South Dakota," *ibid.*, not to the Ogden service center, and the account-

ant did not purport to be filing the missing return at that time.[2]

In October 2005, the IRS opened an audit of petitioner's 2001 tax year. Pet. App. 119a. In 2007, during the audit, an attorney for petitioner sent the IRS a second copy of the same document that Kotick's accountant had faxed to the IRS revenue agent in 2005. *Id.* at 8a. The second copy was sent by mail to "the office of an IRS attorney in Minnesota," *ibid.*, not to the Ogden service center. That document was again described as a copy of petitioner's "retained copy" of its 2001 Form 1065, which had purportedly been filed in July 2002. *Ibid.*

At no point in the audit did petitioner attempt to file a new return for the 2001 tax year. The IRS personnel involved in the audit never forwarded the Form 1065 copies that they received to the Ogden service center for processing as late-filed returns, and petitioner did not ask them to do so. Pet. App. 8a. Petitioner instead maintained throughout the audit that it had already filed its 2001 Form 1065 in July 2002; that the three-year clock for assessing taxes had begun to run at that time; and that any assessment after July 2005 was therefore time-barred. In May 2007, for example, petitioner's attorney at Skadden Arps stated in correspondence with the IRS that "[w]e renew our objection to your re-examination of the 2001 returns as the statute

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[2] By then, the IRS had already begun auditing Kotick's personal income tax returns for 2001 and 2002. Pet. App. 40a. In the course of that audit, Kotick provided a different IRS revenue agent with "an unsigned copy of [petitioner's] 2001 Form 1065," *ibid.*, and that agent believed that petitioner "had filed its 2001 partnership return in 2002," Pet. 11. The basis for the agent's mistaken belief is unclear in the record.

of limitations on assessment with respect to both the Form 1065 and the Form 1040 is closed. * * * As we discussed after your interview of [Kotick's personal accountant] in January 2006, it is our view that the taxpayer has met his burden of demonstrating that the returns were filed in July 2002." 2 T.C.R. 175.

In October 2010, the IRS issued a notice of final partnership administrative adjustment with respect to petitioner's 2001 tax year, disallowing the claimed $35 million deduction from the tax shelter. Pet. App. 8a.

3. Petitioner—acting through AGK Investments as its designated tax-matters partner—challenged the notice in the United States Tax Court. Pet. App. 8a; see Pet. II. Petitioner conceded that it was not entitled to the $35 million tax-shelter loss on the merits but nonetheless claimed that the IRS's adjustment was time-barred. Pet. App. 8a. As it had during the audit, petitioner initially maintained that its 2001 Form 1065 had been "filed" in July 2002 for limitations purposes. *Id.* at 9a; see C.A. E.R. 278.

During the litigation, however, petitioner abandoned that theory and instead came to focus on the copies of Form 1065 provided to IRS personnel by fax in 2005 and by mail in 2007—the documents that petitioner had previously represented to be retained copies of its already-filed 2001 return. Petitioner contended that its 2001 Form 1065 had been "filed" at least as of the date of those submissions. Pet. App. 9a. "If either of those actions constituted a 'filing,'" then the three-year assessment period "would have expired at the latest by July 2010, rendering the IRS's October 2010 administrative adjustment untimely." *Ibid.*

The Tax Court denied petitioner's motion for summary judgment on the timeliness issue. Pet. App. 117a-

125a. The court explained that, "[f]or a taxpayer to secure the benefit of a limitations period bar, there must be 'meticulous compliance by the taxpayer with all named conditions.'" *Id.* at 122a (quoting, indirectly, *Lucas* v. *Pilliod Lumber Co.*, 281 U.S. 245, 249 (1930)). The court further explained that "[o]ne such requirement is that a return be filed at the designated place of filing returns." *Ibid.* And the court found that petitioner had failed to comply with that requirement "when it faxed a copy" of its 2001 Form 1065 to the IRS revenue agent in South Dakota "or when it sent a copy to [IRS] counsel in 2007" in Minnesota—neither one of which was the designated place for filing a partnership return. *Ibid.* The court also found that neither of those submissions had been "forwarded to the Ogden service center," and it pointed to a "plethora of caselaw holding that a revenue agent is not a designated filing place." *Ibid.* The court therefore agreed with the government that petitioner had never properly filed a return for the 2001 tax year, and the "limitations period" on assessment "never began to run." *Id.* at 121a. The court later entered a stipulated decision upholding the IRS's adjustment, disallowing petitioner's claimed $35 million loss for the 2001 tax year. *Id.* at 113a-115a.

4. A divided panel of the court of appeals initially reversed and remanded, agreeing with petitioner that the IRS's adjustment was untimely. Pet. App. 35a-112a. The court then granted the government's petition for rehearing en banc and vacated the panel opinion. *Id.* at 34a. After further proceedings, the en banc court affirmed in a 10-1 decision. *Id.* at 1a-33a.

a. In the vacated panel opinion, the majority concluded that petitioner had filed its 2001 return in 2005 when it faxed a copy to the IRS revenue agent in South

Dakota. Pet. App. 54a. The majority acknowledged that the IRS regulation specifying the "time, manner, and place of filing partnership returns" required that a partnership return "'be filed with the service center prescribed in * * * instructions to the form,'" *id.* at 45a (quoting 26 C.F.R. 1.6031(a)-1(e)(1) (2001)), which was, for petitioner, the Ogden service center. But the majority interpreted that regulation to govern only the "time and place to file *timely* partnership returns," and concluded that the *place*-for-filing requirement set forth in the regulation does not apply when "filing * * * *late* returns." *Id.* at 46a (emphases added). Having determined that IRS regulations were "silent on filing procedures for late returns," *ibid.*, the majority further concluded that petitioner's 2001 Form 1065 was "filed" at least when an IRS revenue agent asked for and received a copy of it in 2005, *id.* at 48a.

Judge Bade dissented. Pet. App. 58a-112a. She would have held that, "under the plain text of the Tax Code and IRS regulations and the unanimous weight of applicable precedent," petitioner "never filed its 2001 partnership return, and the IRS was permitted to adjust [petitioner's] 2001 partnership return at any time." *Id.* at 60a. She described the majority's contrary view as "astonishing," "unprecedented," "deeply implausible," and "contrary to law." *Id.* at 61a-62a. In particular, Judge Bade found nothing in the "regulatory text" to support the majority's view that Section 1.6031(a)-1(e)(1) governs the place for filing "timely returns" but not untimely returns. *Id.* at 68a. She would have construed the regulation to govern "when and where a partnership must file its returns" and not to "separate timely and untimely returns into different categories." *Id.* at 70a.

b. On rehearing, the en banc court of appeals agreed with Judge Bade's analysis and affirmed the Tax Court's decision. Pet. App. 1a-17a. The court of appeals began by reiterating that, under this Court's precedent, a taxpayer must comply with "all named conditions" in order to invoke a limitations period to defeat the assessment and collection of taxes otherwise due. *Id.* at 10a (quoting *Pilliod Lumber*, 281 U.S. at 249). Here, the court of appeals explained, one of the named conditions "with which [petitioner] had to comply to secure the benefit of the limitations period was the requirement that a partnership file its return 'at such place as may be prescribed in regulations.'" *Ibid.* (quoting 26 U.S.C. 6230(i) (2000)). The regulations in turn prescribed the Ogden service center as the place for filing petitioner's 2001 return, and petitioner "did not meticulously comply with" that requirement "because neither the IRS revenue agent nor the IRS attorney to whom [petitioner] sent copies of its 2001 return qualified as a designated place for filing." *Id.* at 10a-11a.

The court of appeals rejected petitioner's argument that the place-for-filing regulation does not apply to untimely or delinquent partnership returns, explaining that "[t]he regulation makes no distinction between returns that are filed on time and those that are filed late, and its place-for-filing requirement contains no carve-out for delinquent returns." Pet. App. 13a. The court observed that the regulation specifies the required place and time for filing a partnership return "in separate provisions." *Ibid.* And the court found "nothing in the text of the regulation" to indicate that compliance with one provision is "conditioned on compliance with the" other, "such that filing at the designated place

somehow becomes optional whenever a taxpayer files its return late." *Ibid.*

The court of appeals also emphasized that the conclusion it reached was "consistent with cases from other circuits and a long line of Tax Court decisions," treating returns as not having been filed until they were "submitted to, or eventually received by, the person or office specified in the applicable regulations as the designated place for filing." Pet. App. 11a-12a (citing *Coffey* v. *Commissioner*, 987 F.3d 808, 812-815 (8th Cir. 2021), cert. denied, 142 S. Ct. 758 (2022); *Allnutt* v. *Commissioner*, 523 F.3d 406, 413-414 (4th Cir.), cert. denied, 555 U.S. 996 (2008); *O'Bryan Bros., Inc.* v. *Commissioner*, 127 F.2d 645, 647 (6th Cir.), cert. denied, 317 U.S. 647 (1942); and *W. H. Hill Co.* v. *Commissioner*, 64 F.2d 506, 507-508 (6th Cir.), cert. denied, 290 U.S. 691 (1933)). And the court rejected petitioner's various arguments about IRS guidance documents and manuals, finding that none of the materials petitioner invoked "purport[ed] to override the regulatory requirements that otherwise govern the manner in which, and the place at which, returns must be filed." *Id.* at 16a; see *id.* at 14a-16a.

Judge Bumatay dissented. Pet. App. 17a-33a. He would have reversed for the reasons given in the panel opinion, which he had authored.

ARGUMENT

Petitioner renews its contention that the IRS regulation setting forth the required place and time for filing "[t]he return of a partnership" for the 2001 tax year, 26 C.F.R. 1.6031(a)-1(e) (2001), addresses only "where to file *timely* returns" and thus does not govern the circumstances of this case, where petitioner by its own account failed to file a timely 2001 partnership return. Pet. 23; see Pet. 22-25. The en banc court of appeals

correctly rejected that contention in a 10-1 decision. Petitioner does not claim that the decision below conflicts with any decision of this Court or another court of appeals, and it does not. To the contrary, the result below is "consistent with cases from other circuits and a long line of Tax Court decisions." Pet. App. 11a. No other court of appeals has ever endorsed petitioner's counter-intuitive view that the regulatory requirements governing *where* to file a partnership return cease to apply after a partnership violates the correlative requirements governing *when* to file such a return, and the IRS has never endorsed that view in any guidance issued to taxpayers or any of the internal IRS documents that petitioner invokes—all of which the en banc court examined and found not to support petitioner's position. No further review is warranted.

1. The court of appeals correctly held that the IRS was permitted to disallow petitioner's claimed $35 million loss from a tax-shelter transaction in the 2001 tax year "at any time" because the partnership had "fail[ed] * * * to file a return" for that year. 26 U.S.C. 6229(c)(3) (2000). As the court explained, petitioner's transmissions of what it described during the audit as retained copies of its 2001 Form 1065 to an IRS revenue agent in 2005 and IRS counsel in 2007 did not constitute "filing" for these purposes because those transmissions failed to comply with the regulation specifying the designated place for filing a partnership return, 26 C.F.R. 1.6031(a)-1(e)(1) (2001). See Pet. App. 10a-13a.

a. This Court has long recognized the need for strict adherence to tax filing requirements in order to effectively administer the "system of self-assessment which is so largely the basis of our American scheme of income taxation." *Commissioner* v. *Lane-Wells Co.*, 321 U.S.

219, 223 (1944). Given the "millions of taxpayers" in the country and the immense volume of returns and other documents that they submit to the IRS each year, the system "simply cannot work on any basis other than one of strict filing standards." *United States* v. *Boyle*, 469 U.S. 241, 249 (1985); see *Lane-Wells Co.*, 321 U.S. at 223 (emphasizing the IRS's need to receive tax information "with such uniformity, completeness, and arrangement that the physical task of handling and verifying returns may be readily accomplished"). The Court has also insisted on "meticulous compliance by the taxpayer with all named conditions in order to secure the benefit" of any limitations period for assessing taxes. *Lucas* v. *Pilliod Lumber Co.*, 281 U.S. 245, 249 (1930); see, *e.g.*, *Badaracco* v. *Commissioner*, 464 U.S. 386, 391 (1984) (observing that a "statute of limitations Congress has written for tax assessments" must "'receive a strict construction in favor of the Government'") (citation omitted).

The court of appeals correctly applied those principles to the "named conditions" at issue here, *Pilliod Lumber*, 281 U.S. at 249, which petitioner failed to follow. Under TEFRA, the IRS has at least three years to assess taxes on any person that are attributable to partnership items for a given taxable year, running (as relevant here) from "the date on which the partnership return for such taxable year was filed." 26 U.S.C. 6229(a)(1) (2000); see also 26 U.S.C. 6230(i) (2000). And the regulation in effect at the relevant time for this case stated that "[t]he return of a partnership must be filed with the service center prescribed in the * * * instructions to the form." 26 C.F.R. 1.6031(a)-1(e)(1) (2001).

The prescribed IRS service center for petitioner was located in Ogden, Utah; petitioner failed to comply with the regulation's place-for-filing requirement when cop-

ies of its Form 1065 were sent to the offices of an IRS revenue agent in South Dakota in 2005 or an IRS lawyer in Minnesota in 2007; and petitioner therefore never "properly filed" a partnership return for 2001. Pet. App. 11a. Having failed to "meticulously comply" with the named conditions for filing a return, petitioner "is not entitled to claim the benefit of the three-year limitations period" running from the date of filing. *Ibid.* Instead, this case is governed by TEFRA's provision addressing "a failure by a partnership to file a return" for a given taxable year. 26 U.S.C. 6229(c)(3) (2000). In such a case, TEFRA states that any tax attributable to partnership items for that year "may be assessed at any time." *Ibid.* The court of appeals was therefore correct to reject petitioner's effort to invoke the three-year limitations period on the particular facts of this case.

The result here might have been different if the IRS revenue agent to whom petitioner faxed a Form 1065 in 2005 had transmitted that document to the Ogden service center for filing, or if the IRS counsel who received a copy of the same document in 2007 had done so. See Pet. App. 17a (discussing Tax Court precedent establishing that "when a taxpayer submits a return to someone who is not authorized to accept it for filing, and the return is subsequently forwarded to the correct IRS office, the limitations period commences on that later date"). But petitioner never asked the IRS revenue agent or the IRS attorney to forward the Form 1065 for filing, and neither one did. *Id.* at 8a.

Petitioner was represented by sophisticated counsel at the time and maintained throughout the audit that it had *already* filed its 2001 Form 1065 in July 2002 and was merely providing "retained" copies. Pet. App. 8a; see, *e.g.*, 2 T.C.R. 174-175 (letter from counsel). It was

only during the Tax Court proceeding, after petitioner was forced to concede that it could not prove that it had filed a return in 2002, that it shifted to arguing that the 2005 and 2007 transmittals should be deemed to have constituted filing the return. See Pet. App. 8a-9a, 119a-120a & n.7. The Tax Court and the court of appeals properly rejected that argument as foreclosed by petitioner's failure to comply with the requirements governing the place for filing a partnership return.

b. Petitioner contends (Pet. 22-24) that its failure to file a timely partnership return for the 2001 tax year freed it from having to comply with the requirement that "[t]he return of a partnership must be filed with the service center prescribed" in the instructions to Form 1065, 26 C.F.R. 1.6031(a)-1(e)(1) (2001), and permitted it to instead effectuate its filing at some other place, such as the office of an IRS revenue agent in a different State. That contention would "read[] a massive gap into the regulations," and accepting it would "effect[] a sea change in the interpretation of long-standing, and previously uncontroversial, filing regulations." Pet. App. 61a-62a (Bade, J., dissenting from the panel opinion). Judge Bade explained at length why petitioner's reading of the regulation is incorrect, see *id.* at 67a-77a; the en banc court of appeals agreed with her analysis, *id.* at 13a; and petitioner identifies no error in the court's reasoning, let alone any error warranting further review.

By its plain terms, the place-for-filing requirement that petitioner violated applies to "[t]he return of a partnership." 26 C.F.R. 1.6031(a)-1(e)(1) (2001). The regulatory text "makes no distinction between returns that are filed on time and those that are filed late," and it contains no carve-out suggesting that "delinquent returns" may be filed somewhere else. Pet. App. 13a.

Petitioner nonetheless maintains (Pet. 23-24) that the place-for-filing requirement applies only to timely returns, on the theory that such an interpretation is compelled by the adjacent time-for-filing requirement. That requirement also applies to "[t]he return of a partnership" and states that such a return "must be filed on or before the fifteenth day of the fourth month following the close of the taxable year of the partnership." 26 C.F.R. 1.6031(a)-1(e)(2) (2001). According to petitioner, the time-for-filing requirement must necessarily refer only to timely returns when it uses the phrase "[t]he return of a partnership," *ibid.*, because it would be a "'logical impossibility'" to have a rule requiring that untimely returns be filed on time, and the same phrase should be construed the same way in the place-for-filing requirement, Pet. 23 (citation omitted).

Petitioner's interpretation is the one that "makes a hash" (Pet. 23) of the regulatory text. The regulation sets forth in "separate provisions" two requirements that any return of a partnership must satisfy in order to be properly filed. Pet. App. 13a. The return must be filed with the correct service center, by the correct time. "[N]othing in the text" supports petitioner's view that "compliance with the place-for-filing requirement * * * somehow becomes optional" when a person violates the time-for-filing requirement. *Ibid.* Of course, after a person has failed to file a timely return, the person cannot go back in time and comply with the time-for-filing requirement. But it does not follow that the time-for-filing requirement (much less the other requirements) applies only to a "timely" return. Compliance with the time-for-filing requirement is precisely what makes a return timely. But failure to satisfy the timing require-

ment does not authorize or excuse violating other regulatory requirements as well.

Petitioner observes that the regulation says nothing about "delinquent returns." Pet. 24 (citation omitted). But that observation cuts the other way. Had the Secretary wished to provide any special rule governing the place for filing a delinquent partnership return, the Secretary could have addressed delinquent returns in express terms—as the Secretary did in the other IRS regulations that petitioner invokes. See, *e.g.*, 26 C.F.R. 601.104(c)(4) (specifying penalties "for each day the return is delinquent"). The express treatment of delinquent returns elsewhere in the regulatory scheme only confirms that this particular regulation contains no special "carve-out for delinquent returns," Pet. App. 13a, and instead applies to any "return of a partnership," full stop. 26 C.F.R. 1.6031(a)-1(e)(1) (2001). Neighboring provisions also contain a host of other rules that apply to a "return"—specifying, for example, the contents of a return and the elections that must be claimed on a return. See 26 C.F.R. 1.6031(a)-1(b) and (c) (2001). If taken to its logical conclusion, petitioner's position would imply that all of the other requirements imposed in the regulation for a "return" apply only to a *timely* return simply because the regulations have failed to specify that all the non-timing requirements also apply to untimely returns. That would nonsensically leave the requirements for untimely returns entirely unclear.

c. Petitioner further contends (Pet. 24-25) that its understanding of 26 C.F.R. 1.6031(a)-1(e) (2001) is supported by various prior statements by the IRS. Indeed, much of the petition is devoted to seeking to create the misimpression that the IRS has advised taxpayers that its regulations do not address the place for filing un-

timely returns, that other rules or policies govern the place for filing such returns, and that taxpayers have "relied on that advice." Pet. 4; see Pet. 4-5, 9-10, 17-18. Petitioner misreads the various IRS memoranda and guidance documents that it invokes, which do not support its position for the reasons already explained by the court of appeals. Pet. App. 14a-16a; see also *id.* at 89a-94a (Bade, J., dissenting from the panel opinion).

Petitioner principally relies (Pet. 4, 8-9, 17, 20, 24) on a memorandum from the IRS Office of Chief Counsel in 1999, addressing a different filing regulation. That regulation "provided that taxpayers could file a return either 'by mailing it to the appropriate Service Center or by hand carrying the return to the District Director of the internal revenue district in which they live.'" Pet. App. 14a (citation omitted); see 26 C.F.R. 1.6091-2(a)(1) and (c) (1999). The Chief Counsel memorandum addressed "whether revenue officers could accept hand-carried returns for filing as delegees of the District Director" and "concluded that they could." Pet. App. 14a.

The specific individual tax returns (Form 1040s) that occasioned that advice were untimely. See IRS, Office of Chief Counsel, Advice No. 199933039, *Filing Delinquent Returns Directly with Revenue Officers* 2 (June 25, 1999). In a footnote, the Chief Counsel memorandum stated that "[t]he Code, regulations, and instructions of the Form 1040 do not make any reference to delinquent returns." *Id.* at 3 n.1. But that footnote does not support petitioner's position here. Read in context, the footnote was merely observing that no special rules were provided for delinquent returns, which were instead subject to the filing requirements applicable to all returns generally—as the remainder of the memorandum makes clear. See, *e.g.*, *id.* at 4 n.2 (observing that

"since the Code and regulations do not differentiate between timely filed and delinquent returns," taxpayers may file delinquent returns through any of the procedures specified by regulation for filing returns, which included, for such returns, hand delivery); cf. Pet. App. 15a (applying the same principle here).[3]

Petitioner's reliance (Pet. 10, 24-25) on the Internal Revenue Manual is similarly misplaced. The Manual stated in 2005 "that examiners should advise taxpayers to deliver delinquent returns 'promptly to the examiner,'" while also instructing "IRS personnel to process the delinquent returns by sending them 'to the appropriate campus.'" Pet. App. 15a (quoting Internal Revenue Manual §§ 4.4.9.7.3 and 4.12.1.4.2 (2005)). Those directives affirmatively rebut petitioner's position in this case because they reflect the IRS's longstanding view that delivering a delinquent return to an examiner does *not* constitute filing the return, which must instead be delivered "to the appropriate Service Center" in order to be properly filed. *Ibid.* Moreover, the provision instructing IRS personnel who have solicited delinquent returns to forward those returns to the correct service center for filing did not apply to the circumstances of this case, where the IRS requested retained copies of a return that had allegedly already been filed, and petitioner was not purporting to file its 2001 return in a different place. Instead, petitioner maintained that the documents submitted to IRS personnel in 2005 and 2007 were simply retained copies of a return that had already been filed. See Gov't C.A. Br. 43-44.

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[3] Hand-delivery to the appropriate local office is still available as an alternative method of filing some returns. See, *e.g.*, 26 C.F.R. 1.6091-2(d)(1). But petitioner does not claim to have ever hand-delivered its 2001 return.

Petitioner also invokes (Pet. 25) a 2006 policy statement, reprinted in the Internal Revenue Manual, providing that "all delinquent returns submitted by a taxpayer, whether upon his/her own initiative or at the request of a Service representative, will be accepted." Pet. App. 16a (brackets and citation omitted); see Internal Revenue Manual § 1.2.1.6.18 (2006). As the court of appeals explained, "[t]hat statement does nothing more than confirm that delinquent returns submitted by taxpayers will be 'accepted' rather than rejected on the ground they are late." Pet. App. 16a. "It does not purport to override the regulatory requirements that otherwise govern the manner in which, and the place at which, returns must be filed." *Ibid.*

Petitioner is also wrong to characterize the Internal Revenue Manual as public "guidance." Pet. 24. The Manual is a guide for IRS employees, not for the public. The courts of appeals have consistently and correctly held that the Manual lacks the force of law, does not bind the government, and does not give rise to taxpayer rights. See Pet. App. 15a; see also, *e.g.*, *Dickow* v. *United States*, 654 F.3d 144, 153 n.8 (1st Cir. 2011), cert. denied, 565 U.S. 1115 (2012); *Fargo* v. *Commissioner*, 447 F.3d 706, 713 (9th Cir. 2006); *Carlson* v. *United States* (*In re Carlson*), 126 F.3d 915, 922 (7th Cir. 1997), cert. denied, 523 U.S. 1060 (1998); *Valen Mfg. Co.* v. *United States*, 90 F.3d 1190, 1194 (6th Cir. 1996). Likewise, the Chief Counsel memorandum that petitioner invokes reflects internal legal advice to IRS employees, not taxpayers. See 26 U.S.C. 6110(i). By statute, such advice "may not be used or cited as precedent." 26 U.S.C. 6110(k)(3).

Finally, with respect to this particular case, petitioner does not claim that it actually relied on any of the

administrative materials discussed above.[4] According to petitioner, Kotick's accountant mailed the partnership's 2001 Form 1065 in June or July 2002 to the Ogden service center. Pet. 11; see pp. 4-5, *supra*. The return was due on April 15. Thus, on petitioner's own version of events, petitioner and its owners evinced no confusion about the designated place for filing the return even though the return was untimely.

2. The decision below does not conflict with the decision of any other court of appeals, as petitioner tacitly concedes. See Pet. 22 (contending that certiorari is warranted "[r]egardless whether other circuits follow suit"). Whether an untimely partnership return is exempted from the place-for-filing requirement in 26 C.F.R. 1.6031(a)-1(e)(1) (2001) appears to be a question of first impression. But the decision below is consistent with a long line of precedent requiring strict adherence to filing requirements, including prior decisions of this Court, other courts of appeals, and the Tax Court. See Pet. App. 11a-12a (citing cases).

For example, other courts of appeals have held that the mere fact that the IRS obtains a copy of a tax return sufficient to conduct an audit does not eliminate the taxpayer's obligation to file the return. If the return is not filed, the limitations period is not triggered, even if the IRS uses a copy of the unfiled return to audit the taxpayer. See *Coffey* v. *Commissioner*, 987 F.3d 808, 812-813 (8th Cir. 2021), cert. denied, 142 S. Ct. 758 (2022); see also *Heckman* v. *Commissioner*, 788 F.3d 845, 847-848 (8th Cir. 2015) (limitations period runs only from

[4] At oral argument before the panel, petitioner conceded that there is no evidence in the record it ever relied on the provisions of the Internal Revenue Manual that it now invokes. See 10/18/21 C.A. Oral Arg. Recording 34:50-35:08.

the date "the return was filed," not the date on which the IRS acquired "actual knowledge" of a taxpayer's liability in some other way) (emphasis omitted); *Parker* v. *Commissioner*, 365 F.2d 792, 800 (8th Cir. 1966) (requirement to submit return on specified form necessary to prevent "insurmountable confusion"), cert. denied, 385 U.S. 1026 (1967); *W. H. Hill Co.* v. *Commissioner*, 64 F.2d 506, 507-508 (6th Cir.) (lodging return form with revenue agent insufficient to start limitations statute, even though form provided the information upon which assessment was based), cert. denied, 290 U.S. 691 (1933).

Petitioner contends (Pet. 17-22) that the decision below will have negative consequences for delinquent filers in the Ninth Circuit and therefore is sufficiently important to warrant review even in the absence of any conflict of authority. But that contention rests primarily on petitioner's misreading of IRS guidance documents to suggest that the decision below alters the status quo, which it does not. The IRS has never "insisted to taxpayers" that "hand[ing] over late returns" to an IRS revenue agent who requests them is tantamount to filing the returns. Pet. 17. Nor has the IRS ever endorsed petitioner's theory here, under which untimely returns are not subject to any specific regulatory requirement governing the designated place of filing. Adopting that view would threaten to make "every year from April 16 on * * * a tax-filing free-for-all." Pet. App. 77a (Bade, J., dissenting from the panel opinion).

Notably, the IRS's public website states at the very top of the webpage for "Filing Past Due Tax Returns": "File all tax returns that are due, regardless of whether or not you can pay in full. File your past due return the same way and to the same location where you would file an on-time return." IRS, *Filing Past Due Tax Returns*,

www.irs.gov/businesses/small-businesses-self-employed/filing-past-due-tax-returns. In light of that and other public statements and instructions from the IRS, petitioner fails to substantiate any suggestion (Pet. 20-21) that unsophisticated taxpayers might be misled by the Internal Revenue Manual provisions and Chief Counsel memorandum that petitioner excavated for purposes of this litigation. No further review is warranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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