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

A tax matters partner who is also a notice partner may file a petition as a notice partner within the 60-day period after the 90-day filing period for the tax matters partner expires.

Summary

In Barbados #6, Ltd. v. Commissioner, the U. S. Tax Court held that Bajan Services, Inc. , serving as both the tax matters partner and a notice partner for the partnerships Barbados #6 Ltd. and Barbados #5 Ltd. , could file a timely petition as a notice partner within the 60-day window following the expiration of the 90-day period reserved for the tax matters partner. The IRS had issued two notices of final partnership administrative adjustment (FPAA), one to the tax matters partner and another to notice partners, including Bajan Services, Inc. The court rejected the IRS's argument that a tax matters partner could not file a petition as a notice partner, emphasizing the statutory intent to ensure all partners have an opportunity to litigate partnership items. This decision clarified the filing rights of dual-status partners under the Tax Equity and Fiscal Responsibility Act of 1982.

Facts

On June 18, 1984, the IRS issued notices of final partnership administrative adjustment (FPAA) to Bajan Services, Inc. , as the tax matters partner for partnerships Barbados #5 Ltd. and Barbados #6 Ltd. On June 25, 1984, the IRS issued identical FPAA notices to Bajan Services, Inc. , and other notice partners. Bajan Services, Inc. , filed petitions with the Tax Court on September 21, 1984, which was 95 days after the June 18 FPAA and 88 days after the June 25 FPAA. The IRS moved to dismiss the cases for lack of jurisdiction, arguing that the petitions were untimely because they were filed beyond the 90-day period applicable to the tax matters partner.

Procedural History

The IRS issued FPAA notices on June 18, 1984, to Bajan Services, Inc. , as the tax matters partner, and on June 25, 1984, to Bajan Services, Inc. , as a notice partner. Bajan Services, Inc. , filed petitions in the Tax Court on September 21, 1984. The IRS filed motions to dismiss for lack of jurisdiction on April 1, 1985. The Tax Court denied the motions, holding that the petitions were timely filed by Bajan Services, Inc. , as a notice partner.

Issue(s)

1. Whether a tax matters partner, who is also a notice partner, may file a petition as a notice partner within the 60-day period following the expiration of the 90-day period for the tax matters partner?

Holding

1. Yes, because the tax matters partner, also qualifying as a notice partner, may file a petition within the 60-day period after the expiration of the 90-day period, as provided by section 6226(b) of the Internal Revenue Code.

Court's Reasoning

The Tax Court's decision was grounded in the interpretation of section 6226 of the Internal Revenue Code. The court noted that section 6226(a) allows the tax matters partner 90 days to file a petition, while section 6226(b) permits any notice partner to file within 60 days after the 90-day period if the tax matters partner does not file. The court rejected the IRS's argument that a tax matters partner could not also file as a notice partner, citing the plain language of the statute which allows "any notice partner" to file within the 60-day period. The court emphasized that the statutory scheme aims to ensure all partners have an opportunity to litigate partnership items and that a dual-status partner should not be precluded from exercising their rights as a notice partner. The court also noted that the heading of section 6226(b), "Petition by Partner Other Than Tax Matters Partner," was not intended to limit the rights of a tax matters partner who also qualifies as a notice partner. The dissent argued that allowing a tax matters partner to file as a notice partner effectively extended the filing period to 150 days, contrary to the statutory intent.

Practical Implications

This decision clarifies that a tax matters partner who is also a notice partner has the right to file a petition within the 60-day period reserved for notice partners if they fail to file within the initial 90-day period. This ruling expands the opportunities for judicial review of partnership items, ensuring that partners with dual status are not denied their rights to challenge IRS adjustments. Practically, this means that attorneys representing partnerships should be aware of the dual filing rights of their clients and consider filing as a notice partner if the initial filing as a tax matters partner is missed. The decision also highlights the importance of clear communication in FPAA notices to avoid confusion about filing deadlines. Subsequent cases, such as those involving partnership audits, will need to consider this ruling when determining the timeliness of petitions filed by dual-status partners.

