Transpac Drilling Venture 1982-22 v. Commissioner, T.C. Memo. 1988-280 (1988)

A petition for readjustment of partnership items filed by notice partners before the expiration of the 90-day period granted to the tax matters partner for filing such a petition is ineffective to commence a partnership action.

Summary

In this Tax Court case, notice partners of Transpac Drilling Venture 1982-22 filed a petition for readjustment of partnership items on the 90th day after the Notice of Final Partnership Administrative Adjustment (FPAA) was mailed. The court considered whether this petition was timely and effective to commence a partnership action, given that the statute grants the tax matters partner 90 days to file first, and only then allows notice partners to file within the subsequent 60 days. The court held that because the notice partners filed their petition on the last day of the 90-day period afforded to the tax matters partner, it was premature and thus ineffective. Consequently, a second petition filed the following day was deemed the effective petition.

Facts

The Commissioner issued a Notice of Final Partnership Administrative Adjustment (FPAA) to Transpac Drilling Venture 1982-22 on April 14, 1986.

This FPAA was sent to both the tax matters partner and all notice partners, including the petitioners in this case.

The tax matters partner did not file a petition for readjustment within the initial 90-day period.

The notice partners filed a petition for readjustment on July 14, 1986, which was exactly 90 days after April 14, 1986.

They filed a second, identical petition on July 15, 1986.

The Commissioner argued that the July 14th petition was valid and the July 15th petition was a duplicate and should be dismissed.

Procedural History

The Commissioner moved to dismiss the petition filed on July 15, 1986, arguing it was a duplicate of the petition filed on July 14, 1986, which the Commissioner contended was the effective petition.

The Tax Court considered the Commissioner’s motion to dismiss.

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Issue(s)

1. Whether a petition for readjustment of partnership items filed by notice partners on the 90th day after the mailing of the Notice of FPAA, the last day of the period allowed for the tax matters partner to file, is effective to commence a partnership action under I.R.C. § 6226(b).

Holding

1. No, because I.R.C. § 6226(b) explicitly allows notice partners to file a petition only if the tax matters partner does not file within the initial 90-day period, and the petition by the notice partners was filed on the last day of that 90-day period, not after it.

Court's Reasoning

The court focused on the statutory language of I.R.C. § 6226. Subsection (a) grants the tax matters partner 90 days to file a petition. Subsection (b) then allows notice partners to file "within 60 days after the close of the 90-day period set forth in subsection (a)."

The court noted that the 90th day from April 14, 1986, was July 13, 1986, a Sunday. Under I.R.C. § 7503, when the last day for performing an act falls on a weekend or holiday, the deadline is extended to the next business day. Therefore, the 90-day period for the tax matters partner extended to Monday, July 14, 1986.

The court reasoned that because the notice partners filed their petition on July 14, 1986, they filed it *during*, not after, the 90-day period exclusively granted to the tax matters partner. Quoting the Conference Committee report, the court emphasized that notice partners can file only "if the tax matters partner does not file a petition within the 90-day period." H. Rept. 97-760, at 603 (Conf. 1982), 1982-2 C.B. 600, 665.

The court cited Tax Court Rule 240(c)(1)(h), which implies that a petition filed prematurely by a notice partner is not effective. Thus, the July 14th petition was ineffective, and the July 15th petition was the valid petition that commenced the partnership action.

Practical Implications

This case underscores the strict adherence to statutory deadlines in tax law, particularly in partnership tax matters. It clarifies that notice partners must wait until the full 90-day period afforded to the tax matters partner has completely expired before they can effectively file their own petition for readjustment of partnership items.

Legal practitioners handling partnership tax disputes must meticulously calculate

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these deadlines, considering weekend and holiday extensions, to ensure petitions are filed timely and by the correct parties. Premature filings by notice partners will not be recognized, potentially jeopardizing the partners' rights to challenge partnership adjustments.

This ruling emphasizes the hierarchical structure established by TEFRA (Tax Equity and Fiscal Responsibility Act) for partnership litigation, giving the tax matters partner the primary window to initiate litigation before notice partners can act.

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