Roberts v. Commissioner, 94 T. C. 853 (1990)

The amount a partner has at risk under section 465 is an affected item, not a partnership item, and can be determined in a deficiency proceeding without a partnership-level adjustment.

Summary

In Roberts v. Commissioner, the Tax Court ruled that a partner's at-risk amount under section 465 is not a partnership item but an affected item. The case involved Leroy and Nancy Roberts, who were partners in three oil and gas exploration partnerships subject to TEFRA unified partnership procedures. The IRS disallowed the Roberts' claimed losses, arguing that side agreements with third parties reduced their at-risk amounts. The court held that these at-risk determinations could be made at the partner level in a deficiency proceeding, as they did not require a partnership-level adjustment. This decision clarifies the distinction between partnership items and affected items, impacting how tax liabilities related to at-risk amounts are assessed.

Facts

Leroy and Nancy Roberts invested in three oil and gas partnerships: Paris Energy, Ltd. , Montague Energy Partners, and Comanche Energy Partners. They made cash contributions and signed assumption agreements for minimum annual royalties (MARs). The Roberts were assured by the promoter that they could cancel their obligations by transferring their partnership interests to the sublessor. The IRS issued a notice of deficiency disallowing the Roberts' claimed losses from these partnerships, asserting that side agreements with third parties reduced their at-risk amounts under section 465.

Procedural History

The Roberts filed a motion to dismiss for lack of jurisdiction and to strike portions of the IRS's notice of deficiency related to the partnerships. The case was assigned to Special Trial Judge Larry L. Nameroff. The Tax Court adopted the Special Trial Judge's opinion, which held that the at-risk determinations could be made in a deficiency proceeding without a partnership-level adjustment.

Issue(s)

1. Whether the Tax Court has jurisdiction to hear the IRS's contention that side agreements existed between the Roberts and third parties, affecting their at-risk amounts under section 465.

Holding

1. Yes, because the at-risk amounts under section 465 are not partnership items but

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affected items, which can be determined in a deficiency proceeding without a partnership-level adjustment.

Court’s Reasoning

The court reasoned that the at-risk amounts under section 465 are not required to be taken into account by the partnership and thus are not partnership items under section 6231(a)(3). Instead, they are affected items that can be adjudicated at the partner level in a deficiency proceeding. The court emphasized that the existence and effect of side agreements with third parties do not affect the partnership’s books, records, or returns. The court distinguished between partnership items, which must be determined at the partnership level, and affected items, which can be determined in a deficiency proceeding. The court rejected the Roberts’ argument that the at-risk determination required a partnership-level adjustment, holding that the IRS could contest the at-risk amounts without challenging the Roberts’ basis in the partnerships.

Practical Implications

This decision has significant implications for how at-risk amounts are determined in partnership tax cases. It allows the IRS to challenge a partner’s at-risk amounts in a deficiency proceeding without initiating a partnership-level adjustment. This ruling clarifies the distinction between partnership items and affected items under TEFRA, affecting how tax liabilities related to at-risk amounts are assessed. Practitioners must be aware that at-risk determinations can be made at the partner level, even if the statute of limitations for partnership-level adjustments has expired. This case may influence how taxpayers structure their investments and how the IRS audits partnerships, as it provides a mechanism for the IRS to challenge at-risk amounts without a full partnership audit.

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