Amesbury Apartments, Ltd. v. Commissioner, 95 T. C. 227 (1990)

The tax matters partner is determined by alphabetical order of general partners with equal profits interests, and a power of attorney can validly extend the statute of limitations for assessment.

Summary

In Amesbury Apartments, Ltd. v. Commissioner, the U. S. Tax Court clarified the designation of a tax matters partner (TMP) under the Tax Equity and Fiscal Responsibility Act (TEFRA) and upheld the validity of a statute of limitations extension executed by an authorized representative. The partnership, Amesbury Apartments, Ltd. , had two general partners with identical profits interests, and the court ruled that Bowen Ballard was the TMP based on alphabetical listing. Additionally, the court found that a consent form extending the statute of limitations for 1983, signed by a CPA under a power of attorney, was valid, thus the IRS's issuance of the Final Partnership Administrative Adjustment (FPAA) was timely.

Facts

Amesbury Apartments, Ltd. , a limited partnership, had two general partners, Bowen Ballard and Ballard Equity Investments, Inc. , each with a 1% profits interest. The IRS issued an FPAA to Bowen Ballard as the TMP for the 1983 and 1984 tax years. Ballard Equity filed a petition claiming to be the TMP, and later filed another petition as a notice partner. In February 1986, Ballard Equity authorized a CPA firm to represent Amesbury before the IRS, and in January 1987, the CPA executed a consent form extending the statute of limitations for 1983.

Procedural History

The IRS issued an FPAA on March 30, 1988, to Amesbury, addressed to Bowen Ballard as TMP. On June 30, 1988, Ballard Equity filed a petition in the U. S. Tax Court claiming to be the TMP. The IRS moved to correct the caption to reflect Ballard Equity as a notice partner. On August 29, 1988, Ballard Equity filed a second petition as a protective measure. The IRS moved to dismiss this as a duplicate petition. Amesbury moved to dismiss for lack of jurisdiction due to an expired statute of limitations for 1983, and also moved to hold the IRS in default for failing to answer the second petition.

Issue(s)

1. Whether Bowen Ballard or Ballard Equity Investments, Inc. , is the tax matters partner for Amesbury Apartments, Ltd. , for the 1983 and 1984 tax years.
2. Whether the petition filed by Ballard Equity on June 30, 1988, can be considered as filed by a notice partner.
3. Whether the second petition filed by Ballard Equity on August 29, 1988, should be dismissed as a duplicate petition.

4. Whether the consent extending the statute of limitations for 1983, signed by the CPA under a power of attorney, is valid.

Holding

1. No, because Bowen Ballard is the tax matters partner as his name appears first alphabetically among the general partners with equal profits interests.
2. Yes, because the petition was timely filed within the 60-day period provided for notice partners under section 6226(b)(1).
3. Yes, because the first petition, corrected to reflect Ballard Equity as a notice partner, will go forward.
4. Yes, because the CPA had valid authority under the power of attorney to extend the statute of limitations.

Court's Reasoning

The court applied the rules under section 6231(a)(7)(B) to determine the TMP, finding that without a designated TMP, the general partner with the largest profits interest or the first alphabetically listed partner with equal interests is the TMP. The court rejected Ballard Equity's claim to be the TMP, as Bowen Ballard's name appeared first alphabetically. The court followed *Barbados #6 Ltd. v. Commissioner* in allowing a notice partner to file a petition within the 60-day period following the 90-day period for the TMP, thus validating Ballard Equity's first petition as a notice partner. The court dismissed the second petition as a duplicate. Regarding the statute of limitations, the court found that the power of attorney granted the CPA authority to act on behalf of the partnership, including executing the consent form, thus extending the statute of limitations for 1983.

Practical Implications

This decision clarifies the process for determining the TMP under TEFRA when general partners have equal interests, emphasizing the importance of alphabetical listing. It also underscores the validity of powers of attorney in extending statutes of limitations, providing guidance for partnerships and their representatives in managing tax disputes. Practitioners should ensure clear designation of TMPs and carefully draft powers of attorney to cover all necessary actions, including extending statutes of limitations. This ruling may influence how partnerships structure their agreements and how the IRS handles similar cases, potentially affecting the timeliness of tax assessments and the ability of partnerships to contest adjustments.