United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18-1145 **September Term, 2019**

FILED ON: OCTOBER 25, 2019

WHO515 INVESTMENT PARTNERS AND MARK SCHOLTEN, TAX MATTERS PARTNER,
APPELLANTS

v.

COMMISSIONER OF INTERNAL REVENUE SERVICE,
APPELLEE

Consolidated with 18-1272

On Appeal from the Decisions
of the United States Tax Court

Before: GARLAND, *Chief Judge*, SRINIVASAN, *Circuit Judge*, and WILLIAMS, *Senior Circuit Judge*.

J U D G M E N T

This appeal was considered on the record from the United States Tax Court and on the briefs of the parties. *See* FED. R. APP. P. 34(a)(2); D.C. CIR. R. 34(j). The Court has afforded the issues full consideration and has determined that they do not warrant a published opinion. *See* D.C. CIR. R. 36(d). It is

ORDERED AND ADJUDGED that the judgment of the Tax Court be **AFFIRMED**.

Partnerships do not pay income tax. *See* 26 U.S.C. § 701. They instead report partners' distributive shares of income, gain, loss, deduction, or credit. *See id.* §§ 702-706. Partners then account for those shares on their federal returns, which must include partnership items "for any taxable year of the partnership ending within or with the taxable year of the partner." *Id.* § 706(a). When the Internal Revenue Service (IRS) disagrees with a partnership's reporting, the Commissioner of the IRS (Commissioner) can issue a Final Partnership Administrative Agreement (FPAA) providing the tax matters partner with notice of and an opportunity to challenge proposed adjustments to the partnership's distributive

shares. *See id.* §§ 6223, 6501. As a general matter, FPAAs must issue within three years of when a taxpayer filed its return. *See id.* § 6501(a). But the IRS and taxpayers can agree to extend that period "for partnership items," *id.* § 6501(n)(2), so long as any extension agreement "expressly provides that [it] applies to the tax attributable to partnership items," *id.* § 6229(b)(3).[1]

In these consolidated appeals, the tax-matters partners for WHO515 Investment Partners and Inman Partners executed two identical extension agreements with the IRS. The Forms 872-I provided that the "amount of any Federal Income tax due on any return(s) made by or for the [partner] taxpayer(s) for the period(s) ended December 31, 2000 may be assessed at any time on or before June 30, 2005." J.A. 158, 386-91. The Forms 872-I also expressly "extend[ed] the period of limitations for assessing any tax (including additions to tax and interest) attributable to any partnership items." *Id.*

Before June 30, 2005, but after the ordinary three-year limitations period for submitting an FPAA, the IRS issued FPAAs with substantial proposed adjustments for both partnerships. The partnerships argue that the proposed adjustments are time-barred because the partnerships had fractional tax years ending on dates before December 31, 2000. They contend that the Forms 872-I extended the limitations period for the partners' individual returns but do not reach the partnerships.

The Tax Court correctly determined that the Forms 872-I apply to the partnerships' fractional tax years. The Forms 872-I are clear: they extend the period for assessing adjustments on the partners' tax returns for the year ended December 31, 2000. The partnerships have fractional tax years that ended "within" the partners' taxable year, 26 U.S.C. § 706(a), so the Tax Code required the partners to report their distributive shares of the partnerships' gains and losses on their individual returns. *See id.* § 702. Thus, the "amount of any Federal Income tax due," J.A. 158, necessarily included the partners' distributive shares of partnership gains and losses. The forms dispel all doubt by expressly stating that they extend the limitations period for assessing "any tax" attributable to "any partnership items" due within the reporting period, *id*., as is required by 26 U.S.C. § 6229(b)(3).

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[1] Congress repealed the Tax Equity and Fiscal Responsibility Act (TEFRA) partnership procedures for tax years subsequent to 2017. *See 15 W. 17th St. LLC v. Comm'r*, 147 T.C. 557, 580 (2016) (citing Bipartisan Budget Act of 2015, Pub. L. No. 114-74, § 1101, 129 Stat. 584, 625-38). The statutes and regulations discussed here were in effect when the Forms 872-I were executed.

The partnerships offer no plausible argument to overcome the text of the forms. They invoke canons of contract interpretation, but these principles cannot control because the agreement's text is unambiguous. *See Wash. Metro. Area Transit Auth. v. Mergentine Corp.*, 626 F.2d 959, 961 (D.C. Cir. 1980). The partnerships point to provisions of the Internal Revenue Manual, but the manual does not require an extension agreement to list a partnership's short tax year. Finally, the partnerships argue that the Forms 872-I should be interpreted without reference to sections 702 and 706(a). Not so. The agreements were drafted against the background of the Internal Revenue Code, so sections 702 and 706(a) inform our interpretation of the agreements.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing *en banc*. *See* FED. R. APP. P. 41(b); D.C. CIR. R. 41.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk