CC:DOM:FS:P&SI 1999-013
EHGreen October 4, 1999
Attachment 1

ACTION ON DECISION

SUBJECT: Dubin v. Commissioner, 99 T.C. 325 (1992)

ISSUE: Whether partnership items reported on a joint return convert to nonpartnership items with respect to both spouses when a TEFRA conversion event, pursuant to I.R.C. § 6231, occurs as to only one spouse.

DISCUSSION: Taxpayer and her husband held interests in three partnerships as community property (i.e., they held the partnership interests jointly) and filed a joint return of income for 1985 claiming their distributive shares of partnership item losses and credits. In June 1988, taxpayer's husband was named as a debtor in a bankruptcy proceeding. At that time, his partnership items converted to nonpartnership items, pursuant to Temp. Treas. Reg. § 301.6231(c)-7T(a), which provides that partnership items of a debtor in bankruptcy convert to nonpartnership items. As a result, the husband's items were no longer subject to the TEFRA procedures. The Service, thereafter, issued a single deficiency notice to the husband and taxpayer disallowing the partnership losses and credits for 1985.

Taxpayer petitioned the notice of deficiency to the Tax Court. Thereafter, taxpayer filed a motion to dismiss for lack of jurisdiction asserting that the Service should have followed the TEFRA procedures with respect to her partnership interest. The Service argued that the taxpayer and her husband should be treated as one person for purposes of applying the TEFRA conversion provisions and since the husband was a debtor in bankruptcy, the items converted with respect to both husband and wife.

The Tax Court held that although section 6231(a)(12) expressly provides that a husband and wife who have a joint interest in a partnership shall be treated as one person, the regulations reverse that rule, stating that a husband and wife holding a joint interest should be treated as separate partners. Temp. Treas. Reg. § 301.6231(a)(12)-1T(a).

Because the regulations treat the husband and wife with a joint interest as separate partners, the Tax Court concluded that the husband's bankruptcy did not constitute a converting event as to the taxpayer's partnership items. The court determined that the bankruptcy of the husband caused the partnership items on the joint return to convert only for him. The court explained that the bankruptcy rule set forth in Temp. Treas. Reg. § 301.6231(c)-7T(a) concerns itself only with respect to the partnership items of the partner named as a debtor in the bankruptcy proceeding, in this case, the taxpayer’s spouse. Accordingly, taxpayer’s partnership items never converted, and thus she remained a partner subject to the TEFRA procedures.

Upon further consideration, we conclude that the Tax Court's analysis is legally correct. As the court observed, Temp. Treas. Reg. § 301.6231(a)(12)-1T(a) provides that spouses holding joint interests are treated as separate partners. Thus, since under Temp. Treas. Reg. § 301.6231(c)-7T(a) the conversion of items occurs only for a partner named as a debtor, a nondebtor spouse would continue to be a partner for TEFRA purposes.

RECOMMENDATION: Acquiescence

REVIEWERS:

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