UNITED STATES TAX COURT
WASHINGTON, DC 20217

MN

GREENWASTE OF TEHAMA, PN, ZANKER ROAD RESOURCE MANAGEMENT, LTD., A CALIFORNIA LIMITED PARTNERSHIP, TAX MATTERS PARTNER,	)	
Petitioner,	)	
v.	)	Docket No. 423-11.
COMMISSIONER OF INTERNAL REVENUE,	)	
Respondent	)	

O R D E R

This case was assigned to this division of the Court, together with two related cases, Nos. 21946-09 and 22233-09. In this case as in those, the petitioner has moved for summary judgment. The petitioner in this case is Zanker Road Resource Management, Ltd, a partnership that is itself the tax matters partner for Greenwaste of Tehama.[1] The Court will assume that the parties know the background facts and general rules regarding summary-judgment law.

Greenwaste of Tehama is a partnership that had exclusive contracts with the cities of Tehama and Red Bluff, California (and perhaps others -- the record is

[1] Greenwaste of Tehama is a TEFRA partnership under the Code. (TEFRA is the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. No. 97-248, 96 Stat. 324, one part of which governs the tax treatment and audit procedures for most partnerships. *See* TEFRA secs. 401-406, 96 Stat. at 648. TEFRA requires the uniform treatment of all "partnership items"--a term defined by section 6231(a)(3) and (4)--and its general goal is to treat all partners alike when the IRS adjusts partnership items.) Each TEFRA partnership is supposed to designate one of its partners as TMP to handle TEFRA issues and litigation for the partnership. Here the IRS mailed a notice of final partnership administrative adjustments to the TMP. (An FPAA, as a notice of final partnership administrative adjustments is abbreviated, is the TEFRA equivalent of a notice of deficiency, in that it triggers the start of the time for filing a case in Tax Court.)

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unclear) to dispose or recycle waste. The contracts, and even more than a barebones summary of their provisions, are not in the record.

Substantially all the assets of Greeenwaste of Tehama were sold to an unrelated third-party, Waste Connections, Inc., in 2003. This case involves disputes between the partnership and the Commissioner in the amounts reported and how to characterize them in computing tax on the sales.

In its petition Greenwaste of Tehama charges the Commissioner with three errors:

> determining that more than $6.3 million of the $8 million that Waste Connections paid was ordinary income and not capital gain;
>
> not allowing a "post-closure expense settlement" of about $43,000 as an ordinary business expense; and
>
> disallowing an "engineering expense" of over $500,000.

In its motion, petitioner argues that the Commissioner is wrong as a matter of law for not accepting petitioner's position that the lump sum price that Waste Connections paid should be allocated to:

> covenant not to compete - $22,500;
>
> depreciable assets - $1.6 million (approximately); and
>
> goodwill - $8.5 million (approximately).

There is no explanation for why these numbers don't add up to the $8 million that Waste Connections paid. Which leads to the first of three reasons that petitioner's motion has to be denied -- it's formally defective. A party moving for summary judgment may rely on uncontested allegations in the pleadings, *see* Rule 121(b); *O'Neal v. Commissioner*, 102 T.C. 666, 674 (1994), but in this case the Commissioner denied the key allegations, *see* Answer at ¶ 6, and petitioner didn't overcome this denial with any affidavits, declarations, or other admissible evidence. *See* Rule 121(d). The motion doesn't even mention the smaller items -- the post-closure and engineering expenses that it claims were deductible; and even the purported allocation of the purchase price is unsupported by any admissible proof of its authenticity or acceptance by Waste Connections. Without this, petitioner cannot show it's entitled to judgment as a matter of law.

The Court also agrees with the Commissioner that Greenwaste of Tehama's seems to argue that the Commissioner must respect the allocation of the purchase price that it and Waste Connections may have agreed to. We rejected this very proposition years ago. *See, e.g., Schmitz v. Commissioner,* 51 T.C. 306, 317 (1968), *aff'd sub nom. Throndson v. Commissioner,* 457 F.2d 1022 (9th Cir. 1972). (And both parties must be prepared, if they do not settle this case, to become conversant in the numerous conflicting lines of caselaw on this question. *See Proulx v. Commissioner,* 594 F.2d 832, 838 (Ct. Cl. 1979) (collecting cases).)

We must finally also reject the motion's assertion that the sale of contracts necessarily produce only capital-gains income. This is wrong as a matter of law -- as we note in denying summary judgment in the related cases, our Court has held that

> in determining whether the taxpayer's contract rights that were transferred constituted a capital asset, courts generally consider all aspects of the bundle of rights and responsibilities of the taxpayer that were transferred, specifically including the following six factors:
>
> (1) How the contract rights originated;
>
> (2) How the contract rights were acquired;

> (3) Whether the contract rights represented an equitable interest in property which itself constituted a capital asset;
>
> (4) Whether the transfer of contract rights merely substituted the source from which the taxpayer otherwise would have received ordinary income;
>
> (5) Whether significant investment risks were associated with the contract rights and, if so, whether they were included in the transfer; and
>
> (6) Whether the contract rights primarily represented compensation for personal services.

Foy v. Commissioner, 84 T.C. 50, 69-70 (1985). In its summary-judgment motion, Greenwaste of Tehama does not mention, much less show an absence of a genuine dispute about, these factors.

It is therefore

ORDERED that petitioner's summary-judgment motion is denied.

The Court will contact the parties to schedule a teleconference to discuss further scheduling in these cases.

(Signed) Mark V. Holmes
Judge

Dated: Washington, D.C.
August 6, 2013