

**UNITED STATES TAX COURT
WASHINGTON, DC 20217**

BLOCK DEVELOPERS, LLC, WILLIAM J.)
MAXAM, APC, TAX MATTERS PARTNER,)
ET AL.,)

CLC

Petitioner(s),)

v.)

Docket No. 3198-10, 23598-12,
23599-12, 23600-12.

COMMISSIONER OF INTERNAL REVENUE,)

Respondent)

ORDER

This case is one in a group of four that the Court has consolidated, and was assigned to this division of the Court last September with petitioner’s amended motion for partial summary judgment pending. After giving both parties a chance to brief the motion, the Court heard oral argument on February 20, 2014.

The Court assumes the parties are familiar with the background facts and the usual rules for summary-judgment motions.

The key facts here are that Block Developers is a partnership subject to TEFRA.¹ Block Developers’ partners were four Roth IRA accounts, each held for the benefit of a particular individual. One of TEFRA’s requirements is that the Commissioner must notify the partners of a partnership that he has begun an audit. *See* IRC § 6223(a)(1).² A partner that is a “pass-thru partner” is obliged to forward the NBAP to “the person or persons holding an interest (through the pass-thru

¹ TEFRA is the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), 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 648-670.

² Practitioners know this as an NBAP -- Notice of Beginning of Administrative Proceeding.

partner) in the profits or losses of the partnership.” IRC § 6223(h)(1). The Code defines these persons as “indirect partners.” IRC § 6231(a)(10).

NBAPs are important because, if a person who is entitled to get one doesn't, he receives in compensation a right to elect out of TEFRA's partnership-level proceedings and treat all his partnership items as nonpartnership items. IRC § 6223(e). This can in turn mean an increase in the probability of the Commissioner's making a mistake in issuing a valid notice of deficiency, and sometimes that means that a partner wins his tax case on a procedural default.

The parties agree, on this motion, that the Commissioner himself did not send NBAPs directly to the individuals who held the Roth IRA accounts. One of the Commissioner's arguments in the case is that these individuals weren't entitled to NBAPs sent directly to them, but this is a disputed point. What is not disputed is that the Commissioner did send timely NBAPs to the Roth IRAs.

So there is an important question here -- whether those Roth IRAs are “pass-thru partners.” If they are, it was they who had to send the NBAPs on to the individual account holders, *see* IRC § 6223(h)(1); and if they failed in their duty, the individuals don't have a right to elect out of TEFRA's partnership-level proceeding. *See* IRC § 6223(e)(1)(A).

Petitioner here reasons that the Roth IRAs were not pass-thru partners because a pass-thru partner has to be a partner, and the Code defines a “partner” as someone whose “income tax liability . . . is determined in whole or in part by taking into account directly or indirectly partnership items of the partnership.” IRC § 6231(a)(2)(B).

Roth IRAs are famously exempt from worrying about their tax liability at all -- and so petitioner reasons that means that Roth IRAs can't be partners, and if they can't be partners, they can't be “pass-thru partners.”

QED.

Or maybe not -- since as the Commissioner counterargues, although the phrase “pass-thru partner” uses the word “partner” it is itself a defined term. And the Code defines “pass-thru partner” not as a type of partner but instead as a type of “person”:

The term “pass-thru partner” means a partnership, estate, trust, S corporation, nominee, or other similar person through whom other persons hold an interest in the partnership with respect to which proceedings under this subchapter are conducted.

IRC § 6231(a)(9).

The Commissioner’s syllogism then proceeds with the undisputed fact that the Roth IRAs in this case were all trusts, and that trusts are specifically included in the list that’s part of the definition of pass-thru partner.

QED back at petitioner.

So everything comes down to what exactly “trust” means. Petitioner here has another distinction that he urges on us -- a distinction between trusts that have tax liability (e.g. complex trusts, IRC § 641) and trusts (e.g. grantor trusts, IRC § 671 and Roth IRAs, IRC § 408A) that don’t. Only the former, he argues, qualify as “partners” and only “partners” can be “pass-thru partners.”

We must of course use the definition that the Code itself gives us, and on this point the Commissioner has to be right. And we have definitively held that Code section to mean what its language suggests:

section 6231(a)(9) plainly defines the term “pass-thru partner” to include a “trust” that holds an interest in a partnership. We read nothing in the relevant provisions that expresses a legislative intent to limit that definition to any particular type of trust.

Murphy v. Commissioner, 129 T.C. 82, 88 (2007).

Murphy is a T.C. opinion. We must follow it. *See Sec. State Bank v. Commissioner*, 111 T.C. 210, 213 (1998), *affd.* 214 F.3d 1254 (10th Cir. 2000). It is therefore

ORDERED that petitioner's April 26, 2013 amended motion for partial summary judgment is denied. It is also

ORDERED that on or before April 11, 2014 the parties confer and file a report stating whether they expect to be able to settle this case and would like it moved to a status-report track, or whether it should be put on a pretrial order.

(Signed) Mark V. Holmes
Judge

Dated: Washington, D.C.
February 25, 2014