

UNITED STATES TAX COURT
WASHINGTON, DC 20217

THE CHRISTOPHER HOWARD COMPANIES,)	
CHRISTOPHER HOWARD STOTEN, TAX)	
MATTERS PARTNER,)	
)	
Petitioner(s),)	
)	
v.)	Docket No. 5664-17.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER

Pursuant to Rule 152(b), Tax Court Rules of Practice and Procedure, it is

ORDERED that the Clerk of the Court shall transmit herewith to the parties a copy of the pages of the transcript of the trial in the above case before Judge Joseph Robert Goeke at Los Angeles, California containing his oral findings of fact and opinion rendered at the trial session at which this case was heard.

In accordance with the oral findings of fact and opinion, a decision will be entered on behalf on the participating partners.

(Signed) Joseph Robert Goeke
Judge

Dated: Washington, D.C.
October 15, 2018

1 Bench Opinion by Judge Joseph Robert Goeke
2 September 21, 2018
3 The Christopher Howard Companies, Christopher Howard
4 Stoten, Tax Matters Partner v. Commissioner of Internal
5 Revenue
6 Docket No. 5664-17

7 THE COURT: The Court has decided to render oral
8 findings of fact and opinion in this case, and the
9 following represents the Court's oral findings of fact and
10 opinion. The oral findings of fact and opinion shall not
11 be relied upon as precedent in any other case.

12 This opinion is rendered pursuant to section
13 7459(B) of the Internal Revenue Code and Rule 152 of the
14 Tax Court Rules of Practice and Procedure. Rule
15 references hereinafter are to the Tax Court Rules of
16 Practice and Procedure, and section references are to the
17 Internal Revenue Code as in effect in the taxable year
18 2010, which is the year before the Court.

19 This case is before us based upon a timely
20 petition seeking review of a Notice of Final Partnership
21 Administrative Adjustment, which was issued to the
22 Christopher Howard Companies, Christopher Howard Stoten,
23 Tax Matters Partner on October 28th, 2016. And
24 subsequently, again, on December 5th, 2016. Hereinafter
25 the Notice of Final Partnership Administrative Adjustment

1 is referred to as a FPAA.

2 The threshold issue in this case is whether the
3 FPAA was timely issued. That issue turns on whether the
4 partnership return filed for the year 2010 by a member of
5 the Limited Liability Company, Mr. Shearin was a valid
6 partnership return. If the return was valid, the statute
7 of limitations has expired. Respondent maintains,
8 however, that the return was invalid because Mr. Shearin
9 was not authorized to sign the return and a subsequent
10 copy of the return which he also submitted.

11 The FPAA addresses the 2010 year of the
12 Christopher Howard Companies, which was an LLC and was
13 treated as a partnership for purposes of the Internal
14 Revenue Code. Hereinafter, the Christopher Howard
15 Companies will be referred to as the "LLC". The parties
16 have entered into a stipulation of facts, and the
17 stipulation of facts and the attached exhibits were
18 admitted into the record of trial of this case. This case
19 came to trial on September 17th, 2018 in Los Angeles,
20 California. In addition to the stipulation of facts and
21 the attached exhibits, the record contains testimony from
22 Mr. Christopher Howard and from Robert Shearin.

23 As will be discussed more in the body of this
24 bench opinion, Mr. Howard's testimony was inconsistent
25 with certain contemporaneous documents, and his testimony

1 was generally not credible about the events leading up to
2 the filing of the 2010 Federal Income Tax Return. The
3 parties have stipulated that Christopher Howard did not
4 file or sign a Federal Income Tax Return for the LLC in
5 2010. The LLC's tax return for 2010 was due on April
6 15th, 2011. The parties have stipulated that Mr. Shearin
7 signed and submitted to the Internal Revenue Service a
8 Form 1065 US return for partnership income for 2010, and
9 that that return was filed on October 20th, 2011.

10 Respondent maintains that the return was not properly a
11 filed document because respondent consistently maintains
12 that Mr. Shearin was not authorized to sign the return.

13 On March 16th, 2012 Mr. Shearin signed and
14 submitted a second Form 1065 US return for partnership
15 income for 2010. As stated, respondent has not accepted
16 and processed either of these documents as a valid income
17 tax return for the LLC for 2010.

18 During the course of the initial audit for the
19 year 2010 respondent did correspond with Mr. Shearin and
20 treated him as the Tax Matters partner of the company.
21 However, at a certain point in the audit, respondent
22 determined that Mr. Shearin had not properly signed the
23 return and took a different tact. Subsequently on January
24 20th, 2016 respondent, through the examining agents,
25 prepared a substitute for return for the LLC for 2010.

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1 The history of this case ~~beings~~ with the
2 relationship between Mr. Shearin and Mr. Howard and the
3 formation of the Christopher Howard Companies, Inc.
4 ~~Incorporation~~ that was not treated as a partnership for *JR*
5 purposes of Federal Income Tax. This corporation was
6 formed sometime before 2004. From the outset of the
7 operations of this original corporation, and the
8 subsequent formation of the LLC in 2004, Mr. Howard and
9 Mr. Shearin understood that Mr. Shearin was primarily
10 responsible for the financial operations of the
11 organization; and that Mr. Shearin would also provide
12 certain financial backing for the organization. The
13 company originally operated as a corporation and its
14 primary business was Mr. Howard's motivational speaking,
15 and the conduct of various lifestyle training seminars for
16 profit.

17 On September 13th, 2004 the Christopher Howard
18 Company, Inc. was converted to the LLC. Articles of
19 Organization - Conversion were filed with the California
20 Secretary of State. On June 30th, 2005 the members of the
21 LLC executed an operating agreement. The terms of this
22 operating agreement are the basis of respondent's
23 arguments that Mr. Shearin was unauthorized to sign the
24 Federal Income Tax Returns in question. Specifically
25 respondent relies upon Article 5.1 of the operating

1 agreement. This article reads as follows: "The business
 2 of the company shall be managed by one manager,
 3 Christopher Howard, a California Limited Partnership. The
 4 manager shall serve until either removal by resignation or
 5 removal by a majority of the members. The manager has the
 6 sole authority to manage the company and is authorized to
 7 make any contracts, including but not limited to,
 8 employment contracts for officers of the company; enter *SPC*
 9 into any transactions; and make an^d obtain any commitments
 10 on behalf of the company to conduct or further the
 11 company's business. The manager may, in writing, delegate
 12 to an employee of the company any of the managers
 13 responsibilities and authority. This provision does not
 14 alter or waive any duty that a manager may have to the
 15 company concerning the manager's exercise of management."

16 Provision 5.4 of the operating agreement
 17 provides: "Except as authorized by the manager no member
 18 is an agent of the company or has authority to make any
 19 contracts, enter into any transactions, or make the
 20 commitments on behalf of the company."

21 Subsequent agreements between Mr. Howard or the
 22 LLC and Mr. and Mrs. Shearin are relevant to this case.
 23 It is also important to note that the original members of
 24 the LLC were Mr. Howard, the Shearin Family Trust,
 25 including members Mr. and Mrs. Shearin as the authorized



1 representatives of the trust, Wendy Beacock, and For A
2 Change in Time, LLC. The members of the LLC and their
3 interest in the LLC on June 30th is summarized as follows:

4 Mr. Howard, 61.5 percent interest.

5 The Shearin Family Trust, 28.5 percent interest.

6 For a Change in Time, LLC, 5 percent.

7 Wendy Beacock, 5 percent.

8 On February 20th, 2009 Doug and Sherry Johnson
9 were also admitted as members, and the interest^s in the *JD*
10 company were formally amended to reduce Mr. Howard's
11 interest to 55 percent and provide a 5 percent interest to
12 Doug and Sherry Johnson. In addition, Mr. and Mrs.
13 Shearin took on an interest of 30 percent, pursuant to the
14 change in the agreement in 2009. Certain other documents
15 are relevant to the relationship between the Shearin Trust
16 and the LLC. The first of these is an agreement dated
17 August 22nd, 2006 between the LLC and Mr. and Mrs. Shearin
18 as individuals. Pursuant to this agreement, Mr. and Mrs.
19 Shearin agreed to lend the LLC \$250,000. The provision
20 provides that until that loan was paid in full Mr. and
21 Mrs. Shearin would have operational control of the LLC.
22 There were subsequent similar agreements
23 amending the loan to provide for additional amounts that
24 have been loaned by Mr. and Mrs. Shearin to the LLC. one
25 was on September 23rd, 2007. It also provided that

1 operational control would remain in the hands of Mr. and
 2 Mrs. Shearin until the \$450,000 loan referenced in that
 3 agreement had been repaid. A similar agreement was
 4 entered into on January 28th, 2008. This agreement
 5 referenced a \$550,000 loan and provided that operational
 6 control would remain in the hands of Mr. and Mrs. Shearin
 7 until the \$550,000 loan had been repaid.

8 Finally, an agreement was entered into on
 9 September 30th, 2009 referencing a total obligation from
 10 the LLC to Mr. and Mrs. Shearin that was computed in an
 11 attached repayment schedule, which reflected repayments
 12 and a total loan balance~~x~~ owed by the LLC to Mr. and Mrs. *JH*
 13 Shearin. The balance reflected in Exhibit A to the
 14 September 30th, 2009 agreement was \$1,182,518. All of the
 15 reference^d agreements were signed by Mr. Howard on behalf *JH*
 16 of the LLC, and by Mr. and Mrs. Shearin. They were also
 17 signed by Mr. Howard individually.

18 From the outset of the operations of the
 19 corporation and continuing through the operations of the
 20 LLC, which was formed in 2004, Mr. Howard and Mr. Shearin
 21 understood that Mr. Shearin was responsible for the
 22 financial operations of the LLC, and that he was
 23 authorized to file Income Tax Returns and other filings
 24 with regulatory and state authorities. This authorization
 25 continued after the formation of the LLC, and based upon



1 Mr. Shearin's testimony and Mr. Howard's testimony, it is
2 apparent that they did not perceive that the operating
3 agreement entered into by the members of the LLC on June
4 30th, 2005 changed Mr. Shearin's authority with respect to
5 the filing of the Federal Income Tax Returns.

6 Respondent's position is that Mr. Howard failed
7 to delegate the authority given to him in the operating
8 agreement, and therefore Mr. Shearin was not authorized to
9 execute the Federal Tax Returns for the LLC for 2010.

10 Pursuant to Federal Income Tax Law, members of the LLC are
11 treated as partners in a partnership. ~~It~~ this case is *OK*
12 properly treated as a partnership subject to the now no
13 longer in place partnership regime set forth in section
14 622~~1~~ et al. *OK*

15 The parties do not dispute that if the forms
16 1065 filed by Mr. Shearin on behalf of the LLC for the
17 year 2010 were properly executed, that the statute of
18 limitations has run, and that the FPAA is invalid.
19 Therefore, we focus our inquiry on whether Mr. Shearin was
20 authorized to file the partnership returns on behalf of
21 the LLC for 2010. As stated, respondent relies on Article
22 5.1 of the Operating Agreement. Respondent is not
23 persuaded by the fact that Mr. Shearin operated in a
24 manner consistent with his longstanding practice with Mr.
25 Howard, which was understood by Mr. Howard to be his role

1 in the LLC. In other words, respondent strictly relies
2 upon the fact that Mr. Howard was the managing partner and
3 that he had not authorized Mr. Shearin to file the Federal
4 Income Tax Returns in writing.

5 Our analysis of the agreement would lead us to a
6 different conclusion than respondent's. We believe that
7 Mr. Shearin was authorized to file the returns pursuant to
8 Article 5.4 and the understanding that he had with Mr.
9 Howard that he was responsible for the financial matters
10 of the company. In addition, we do not read Article 5.1
11 as directly relating to Federal Income Tax Returns. In
12 any event, the agreements entered into by Mr. and Mrs.
13 Shearin with Mr. Howard, previously referenced, beginning
14 with the agreement on August 22nd, 2006 specifically gave
15 operating authority to Mr. and Mrs. Shearin, which
16 agreements were in writing, and which would meet the
17 requirements of Article 5.1 if, in fact, it applied to the
18 filing of Federal Income Tax Returns.

19 The history of the operation of statute of
20 limitations provisions for Federal Income Tax is important
21 in understanding the policy reasons behind the statute of
22 limitations in the present case, and whether those policy
23 reasons are offended by the Income Tax Returns filed by
24 Mr. Shearin.

25 "The policy behind the 'no return' proviso which

1 removes the effect of the statute of limitations is that
2 it is unreasonable to expect the government to be diligent
3 in its efforts to collect unpaid taxes if the facts giving
4 rise to the tax liability are not disclosed." Neptune
5 Mut. Ass'n v. United States, 862 F. 2d 1546, 1555 (Fed.
6 Cir. 1988).

7 In the present case the Income Tax Returns in
8 question were in fact filed, and did give the respondent
9 the information and notice upon which the audit of this
10 case was originated. In fact, the respondent turned to
11 Mr. Shearin during the initial stages of the audit.
12 Nevertheless, respondent argues that section 6063
13 restricts the signing of partnership returns, or in this
14 case a return on behalf of an LLC, to partners with
15 authority. Respondent, in this regard, strictly relies
16 upon section 5.1 of the operating agreement as previously
17 stated. We note that even if we were to interpret section
18 5.1 in conformity with respondent's argument, the loan
19 agreements between the LLC and the Shearins, which
20 transferred operating control to the Shearins would
21 provide written authority.

22 We also note that Mr. Howard never revoked this
23 transfer of written authority as with regards to the 2010
24 Federal Income Tax Return. Mr. Howard testified at great
25 lengths that he believes the loan agreements after the

1 original agreements, referenced previously, were specious
2 and were backdated by Mr. Shearin. Mr. Shearin testified
3 that they were dated on the dates they were signed by Mr.
4 Howard. Mr. Howard offered us no evidence to support his
5 allegations, and in this regard, we find Mr. Shearin's
6 testimony to be credible, and we believe the agreements
7 were on the dates as reflected. We also note that the
8 operating agreement does not specifically address the
9 authority to sign tax returns, and as we previously
10 stated, Mr. Howard and Mr. Shearin had long taken the
11 position that Mr. Shearin was authorized to file returns
12 and that for the years prior to 2010 Mr. Shearin had filed
13 returns for the LLC without argument or incident.

14 Respondent maintains that those returns are
15 irrelevant to the present inquiry and that every year
16 stands alone. However, Mr. Shearin's approval of Mr.
17 Howard's filing of those returns is consistent with our
18 interpretation of the agreement that the provision in
19 article 5.1 did not apply to Federal Income Tax Returns.
20 There's no question that between Mr. Howard and Mr.
21 Shearin, Mr. Shearin was the member of the LLC who was
22 responsible for all financial matters and that Mr. Howard
23 was very comfortable with things operating that way. Mr.
24 Howard testified that he did not understand that he had to
25 provide written authority to Mr. Shearin to file Federal

1 Income Tax Returns.

2 It appears that Mr. Howard's dispute with Mr.
3 Shearin only began in January of 2011 after he was
4 released from the Betty Ford center. Nevertheless,
5 there's no evidence that Mr. Howard revoked the operating
6 control he had provided to Mr. and Mrs. Shearin in the
7 loan agreements previously referenced.

8 On the record before us we hold that the
9 operating agreement did not restrict Mr. Shearin's
10 authority to sign the tax returns as a representative of
11 the trust and a member of the LLC, on behalf of the trust.
12 This holding results in our determination that the statute
13 of limitations provided by section 6229 has expired and
14 that the petitioners have a valid affirmative defense in
15 the present case based upon the fact that respondent may
16 no longer assert the adjustments in the FPAA, as the FPAA
17 was sent to the LLC after the period of limitations had
18 expired.

19 Given our holding the decision will be entered
20 on behalf of the participating partners, and we will not
21 sustain the adjustments in the FPAA.

22 This concludes the Court's oral findings of fact
23 and opinion in this case.

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1 (Whereupon, at 11:08 a.m., the above-entitled matter was
2 concluded.)

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