UNITED STATES TAX COURT
WASHINGTON, DC 20217

GREENTEAM MATERIALS RECOVERY FACILITY PN, GREENWASTE RECOVERY, INC., TAX MATTERS PARTNER,	)	**CLC**
Petitioner(s),	)	
v.	)	Docket No. 21946-09, 22233-09, 423-11.
COMMISSIONER OF INTERNAL REVENUE,	)	
Respondent	)	

O R D E R

The Court released its opinion in these TEFRA cases, T.C. Memo. 2017-122 over a year ago, and entered decisions shortly after. These decisions largely favored petitioners.

On November 15, 2018, we received a letter from petitioners' counsel. In it he stated that the effect of these decisions was to generate a substantial refund to the individual partners for tax year 2003 and small deficiencies for them for two later tax years. He also stated that the IRS proceeded at speed to issue the notices of computational adjustment to them to collect the deficiencies for those two later years, but invited the individual partners to sue in the Court of Federal Claims or their local District Court for the substantial refund for 2003.

Petitioners' counsel urges us to compel the recalcitrant Service Center to respect our final decisions as to the 2003 tax year and just issue the refunds.

The Court understands the frustration, but of course cannot act as an ombudsman in dealing with the IRS bureaucracy. What we can do is accept motions for filing and issue orders disposing of them. When we enter a decision for an individual taxpayer that finds he is owed an overpayment, there is no need

SERVED Dec 11 2018

for him to sue for its refund -- I.R.C. § 6512(b) gives us the jurisdiction to compel refund of that overpayment. We don't even require him to start a new case, but instead have a rule that allows a postdecision motion, Rule 260 of the Tax Court Rules of Practice and Procedure, that gives an efficient remedy to compel refund of the overpayment amount.

But that's not quite the situation here. The decisions that the IRS may not be respecting here are not decisions stating that there were overpayments and specifying their amounts. They are instead decisions that state various partnership-level adjustments. These adjustments have partner-level consequences, and those consequences in these cases (at least according to the November 15 letter) can be computed as an exercise in math with no court having to make any additional determination before their effect on individual partners' liability or entitlement to refund can be fixed.[1]

There seems to have never been a case that deals with precisely this situation.[2] The Code states in § 6512(a)(4) that our ordinary overpayment

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[1] When we conclude a partnership-level case, the IRS does the math to translate any adjustments at that level to actual amounts due to be paid by or refunded to the individual partners. If those adjustments require additional determinations at the partner level, the IRS is supposed to send out affected items notices of deficiency and the individual partners can return to Tax Court to contest them. *See* I.R.C. § 6230(a)(2)(A)(i); *Domulewicz v. Commissioner*, 129 T.C. 11, 19 (2007), *aff'd in part and remanded on other grounds sub nom. Desmet v. Commissioner*, 581 F.3d 297 (6th Cir. 2009). If those adjustments do *not* require additional determinations at the partner level, the IRS assesses the additional tax resulting from the adjustments without issuing a notice of deficiency. *See* I.R.C. §§ 6225(a), 6230(a)(1); *Brookes v. Commissioner*, 108 T.C. 1 (1997) (subchapter B deficiency procedures do not apply to the assessment or collection of a computational adjustment). The partner is then free to file a claim for a refund if the IRS "erroneously computed any computational adjustment" and to subsequently file suit if his claim is disallowed. I.R.C. §§ 6230(c)(1), (3).

[2] We note, however, that we have addressed a version of this issue in *Jaco L.C. v. Commissioner*, 80 TCM 270 (2000), where a tax matters partner filed a petition for readjustment that contested the disallowance of a casualty-loss deduction, claimed a greater casualty loss with a resulting overpayment, and asked that we find that the partners were entitled to refunds due to the overpayment. We concluded, without much reasoning, that we lacked jurisdiction in a partnership-level proceeding over affected items such as overpayments and the refund of these overpayments, but that an individual partner is free to file a claim for refund. *Id.* at 271. We have also concluded that we *had* jurisdiction to determine overpayments resulting from affected

jurisdiction doesn't apply in this situation -- which makes sense, because our decisions in TEFRA partnership cases don't compute the amount of an overpayment or amount due. That section does cross-reference §§ 6221-6234, however, and when one turns to them one finds a section which states that a partner *may* sue for a refund when the IRS fails to make one, *see* I.R.C. § 6230(c)(1)(B). But that same section also states that "[i]n the case of any overpayment by a partner which is attributable to a partnership item (or an affected item) and which may be refunded under this subchapter, to the extent practicable credit or refund of such overpayment shall be allowed or made *without any requirement that the partner file a claim* therefor." I.R.C. § 6230(d)(5).

One practitioner's guide says this means that our Court "has overpayment jurisdiction with respect to affected items." IRS Practice Adviser Report, ¶ 430: Judicial Review of the FPAA/FSAA. Another practitioner's guide warns instead: "*Comment*: It is unclear whether § 6512(b)(2) and Tax Court Rule 260 apply in partnership actions where an overpayment would result to a partner based on the decision entered by the court in the partnership proceeding." Richard A. Levine et al., Proced. & Admin.: Tax Court Litigation, 630-5th Income Tax (BNA).

Rather than act as an ombudsman or make any decision filling this odd little gap in tax law that no one's analyzed at length before, we will treat petitioners' November 15 letter as a motion under Rule 260 and deny it without prejudice as premature. It may turn out that following the Rule's procedures moves the Commissioner to act expeditiously to wrap these cases up. It may turn out that petitioners discover through their own research that they do not want to proceed under this Rule; or the Commissioner may want to argue that it is inapplicable either on its own terms or by analogy.

Until then, it is

ORDERED that the Clerk shall file petitioners' November 15, 2018 letter as a motion under Rule 260 to enforce overpayment determination. It is also

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items attributable to the partnership adjustments where a partner filed a petition from notices of deficiency concerning other affected items. *Woody v. Commissioner*, 95 T.C. 193 (1990).

ORDERED that the motion is denied without prejudice to its renewal in proper form.

(Signed) Mark V. Holmes
Judge

Dated: Washington, D.C.
December 11, 2018