

UNITED STATES TAX COURT  
 WASHINGTON, DC 20217

ANN S. CARRINO, ET AL., )  
 )  
 Petitioner(s), )  
 )  
 v. ) Docket No. 27376-09, 17711-10.  
 )  
 COMMISSIONER OF INTERNAL REVENUE, )  
 )  
 Respondent )  
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**ORDER**

The Court has already released the opinion in these cases. Petitioner moved under Rule 161 for reconsideration before Rule 155 computations were even done.

The Court will assume the parties know the background facts.

What makes the motion difficult is that this was a consolidation of an individual deficiency case with a TEFRA partnership case. And the partnership case was filed *after* the individual case. This can lead to knotty jurisdictional problems, and petitioners essentially tell us that they identified these only after we released the opinion.

We'll start with the partnership action. It presented only one issue -- whether Ms. Carrino was in fact a partner of the petitioning partnership in 2003, as asserted in a very late filed amended partnership return that was prepared by Ms. Carrino's ex-husband. We held in the opinion that we did have jurisdiction, *see Blonien v. Commissioner*, 118 T.C. 541, 551-52 (2002), and that Ms. Carrino was not a partner in the partnership in 2003 because her interest in the partnership was not that of a partner, but of a holder of a community-property interest. Petitioners do not contest this, but argue that the effect of our finding in the partnership case is to require a new notice of deficiency that would supersede the notice that gave rise to the individual case.

Respondent *does* want us to change the opinion as it affects the partnership case: He says that we should make clear that we were addressing only the question of whether Ms. Carrino was a *direct* partner in the partnership. He wants to preserve an argument that Ms. Carrino might

have been an *indirect* partner. We see no reason to reconsider our finding on that point: In *Olsen-Smith, LTD v. Commissioner*, 90 T.C.M. 64, 66 (2005) (and analogous old S corporations cited), we stated that we have no jurisdiction in a partnership-level case to decide who might be an indirect partner -- or who might *not* be an indirect partner. Ms. Carrino was not a direct partner in the partnership, which was her concern based on the amended partnership return that her ex filed with the IRS. She won on that point, and remains the winner on this motion for reconsideration. The FPAA that gave us jurisdiction when she timely challenged it is wrong.

Ms. Carrino argues in her individual case that, because we have jurisdiction in the partnership case, respondent had no right to issue her a notice of deficiency that asserted she had failed to report her share of community-property income. She asserts that “Whether the Court’s determination that [she] was not a partner in CR LP makes it an affected item or an item which has become a nonpartnership item . . . [she] is entitled to a superseding deficiency notice from the Commissioner if the taxability of her community property interest in 2003 in CR LLC remains an issue with [her ex].” This assertion, in turn, seems to flow from her view that her community-property interest in her ex’s partnership interest becomes an “affected item” under TEFRA with her victory in the partnership case.

But this is not true. The central holding in the individual case was that none of this mattered -- under California’s community-property rules, she is treated as receiving income in 2003 regardless of whether she was a partner in her husband’s partnership. This means that the notice of deficiency was determining an adjustment to a nonpartnership item. Once she filed a timely petition challenging that valid notice of deficiency we had jurisdiction to redetermine that determination.

For this reason, it is

ORDERED that petitioners’ motion for reconsideration is denied. It is also

ORDERED that on or before February 11, 2019, the parties submit the computations under Rule 155 in docket number 27376-09 and propose a form of decision document in docket number 17711-10.

**(Signed) Mark V. Holmes**  
**Judge**

Dated: Washington, D.C.  
December 17, 2018