UNITED STATES TAX COURT
WASHINGTON, DC 20217

DRC

RAMAT ASSOCIATES, WIL-COSER ASSOCIATES, A PARTNER OTHER THAN THE TAX MATTERS PARTNER, ET AL.,	)	
Petitioner(s),	)	
v.	)	Docket No. 22295-16, 22296-16.
COMMISSIONER OF INTERNAL REVENUE,	)	
Respondent	)	

O R D E R

These consolidated cases are TEFRA cases involving Ramat Associates (Ramat), a Delaware limited liability company. By a Notice of Final Partnership Administrative Adjustment (FPAA) dated July 14, 2016 (dkt No. 22295-16), respondent adjusted certain partnership items of Ramat's for its 2006 taxable (calendar) year and determined an accuracy-related penalty (without distinction, adjustments). By a second FPAA, dated July 14, 2016 (dkt No. 22296-16), respondent did likewise with respect to Ramat's 2007 and 2008 taxable (calendar) years.

Petitioner has moved for judgment on the pleading in both of these consolidated cases and has moved for partial summary judgment in dkt No. 22296-16 (with respect to 2008). Both motions are predicated on the period of limitations having run for the assessment of any taxes and penalties resulting from the adjustments made in the FPAAs. Respondent objects to our granting either motion.

All section references are to the Internal Revenue Code of 1986, as amended and in effect for the years in issue, and all Rule references are to the Tax Court Rules of Practice and Procedure. We review the FPAAs pursuant to section 6226.

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Rule 120(a) provides, in pertinent part: "After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings." A judgment on the pleadings is based solely on the allegations and information contained in the pleadings and not on any outside matters. See Rule 120(a) and (b); see also Fed. R. Civ. P. 12(c); Black's Law Dictionary 972 (10th ed. 2014). The movant has the burden of showing entitlement to judgment on the pleadings. See Abrams v. Commissioner, 82 T.C. 403, 408 (1984); Hiramanek v. Commissioner, T.C. Memo. 2016-92, aff'd, 745 F. App'x 762 (9th Cir. 2018). He must show that the pleadings do not raise a genuine issue of material fact and that he is entitled to a judgment as a matter of law. See Abrams v. Commissioner, 82 T.C. at 408; Hiramanek v. Commissioner, T.C. Memo. 2016-92, at *7.

Summary judgment is appropriate "if the pleadings, answers to interrogatories, depositions, admissions, and any other acceptable materials, together with the affidavits or declarations, if any, show that there is no genuine dispute as to any material fact and that a decision may be rendered as a matter of law." Rule 121(b). The moving party bears the burden of proving that no genuine dispute as to any material fact exists, and we will draw any factual inferences in the light most favorable to the nonmoving party. See, e.g., Anonymous v. Commissioner, 134 T.C. 13, 15 (2010).

We will deny both motions

Background

Pleadings

Petitioner assigns error to the all of the adjustments for each of Ramat's taxable years in issue (2006, 2007, and 2008, the examination years) and, with respect to the assessment of any tax and penalties resulting from those adjustments, pleads as an affirmative defense that the statute of limitations on assessment has run.

In support of its defense, petitioner avers that Ramat filed its 2006 income tax return, Form 1065, U.S. Return of Partnership Income, on May 4, 2008, and filed its 2007 and 2008 Forms 1065 on or before September 15, 2009.

Petitioner relies on section 6229(a), which provides that the period for assessing tax with respect to partnership items and affected items (without distinction, partnership items) shall not expire before three years after the later of

the date on which the partnership return is filed or the last day for filing such return without regard to extensions. Section 6229(d) tolls that period, if within the period, respondent mails an FPAA to the partnership's tax matters partner.

In answer to petitioner's statute-of-limitations defense, respondent relies on section 6501(a) and states that he has no need for section 6229(a), which extends the section 6501(a) period of limitations in certain circumstances. "[S]ection 6229", he points out, "is not a stand-alone statute of limitations", and "[s]ection 6501 controls the statute of limitations at the partner level for the assessment of any tax flowing from the adjustments in this case". "Section 6501(a)", he continues, "provides, generally, that the amount of any tax imposed shall be assessed within three years after the return was filed, unless extended or another exception applies." Section 6229(a), he concludes, describes "[t]he minimum period[] of time for the assessment any tax attributable to partnership items".

Respondent then avers sufficient facts that, if he is right in his statutory interpretation, require us to deny the motions.

Discussion

Respondent is right in his statutory interpretation. Petitioner has a fundamental misunderstanding of the statutory limits on the period during which tax resulting from the adjustment of partnership items may be assessed against a partner. Section 6229(a) does not provide a separate period of limitations on that assessment. It serves only to extend, in some cases, the period of limitations under section 6501(a) on assessing tax against a partner. We clearly described the relationship between the two sections 13 years ago in G-5 Inv. Pship v. Commissioner, 128 T.C. 186, 189-190 (2007).

> Section 6501(a) provides that the amount of any tax shall be assessed within 3 years from the date a taxpayer's return is filed. The term "return" for purposes of section 6501(a) does not include a return of any person from whom the taxpayer has received an item of income, gain, loss, deduction, or credit, e.g., a partnership return. Sec. 6501(a). Section 6501 provides the general period of limitations for assessing any tax imposed by the Code.
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> Section 6229 establishes the minimum period for the assessment of any tax attributable to partnership items (or affected items) notwithstanding the period provided for in section 6501. Section

> 6229 is not a stand-alone statute of limitations but can extend the section 6501 period of limitations with respect to the tax attributable to partnership items or affected items. Rhone-Poulenc Surfactants & Specialties, L.P. v. Commissioner, * * * [114 T.C. 533], 542-544; Estate of Quick v. Commissioner, 110 T.C. 172, 181-182 (1998), supplemented 110 T.C. 440 (1998).
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> The issuance of an FPAA suspends the running of any applicable period of limitations under sections 6229 and 6501 until the FPAA adjustments become final or conclusively established, after which the Commissioner has 1 year to assess partners with the tax which properly accounts for their distributive shares of the adjusted partnership items. Sec. 6229(d). * * *

At issue in G-5 Invs. Pship was whether, if the periods prescribed by section 6229(a) and 6501(a) have run for a partner's taxable year in which he would take into account his distributive share of a partnership item subject to adjustment, may respondent assess tax for a year of the partner's that is open under section 6501(a) and to which some portion of the item has been carried. We answered in the affirmative:

> [A]fter the Court's decision in this TEFRA partnership proceeding becomes final, respondent may assess a tax liability for a year open under the period of limitations, even though the underlying partnership item adjustments are attributable to transactions that were completed in a year for which assessments of the partners' tax is barred because of the expiration of the period of limitations.

G-5 Invs. Pship. v. Commissioner, 128 T.C. at 191-192. That would seem to cover the case here.

Respondent has pled facts in sufficient detail to establish a genuine dispute as to a material question of fact whether the section 6501(a) period of limitations has lapsed for the assessment of any tax resulting from the adjustments in the FPAAs. We may not dispose of petitioner's affirmative defense of the statue of limitations on the pleadings, nor has petitioner shown itself entitled to partial summary judgment.

On the premises stated, it is

ORDERED that the motions are denied.

(Signed) James S. Halpern
Judge

Dated: Washington, D.C.
January 22, 2020