

Assigned J. Thornton

UNITED STATES TAX COURT

WASHINGTON, DC 20217

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S.T. JUDGE	
Thornton	
FILES	

EQUIPMENT HOLDING COMPANY, LLC, )  
RONALD J. ADAMS, TAX MATTERS )  
PARTNER, )

Petitioner )

Docket No. 18737-07.

v. )

COMMISSIONER OF INTERNAL REVENUE, )

Respondent )

ORDER AND DECISION

This case is before the Court on petitioner's motion for summary judgment filed July 7, 2008, as supplemented April 1, 2009. The issue for decision is whether the Notice of Final Partnership Administrative Adjustment (FPAA) challenged in the petition was untimely because it was sent more than 3 years after the due date of the return for the year in issue or was timely because it was sent within the 6-year extended period of limitations provided by Internal Revenue Code section 6501(e)(1)(A). The issue turns on whether this Court, in Bakersfield Energy Partners v. Commissioner, 128 T.C. 207 (2007), affd. 568 F.3d 767 (9th Cir. 2009), correctly followed the United States Supreme Court opinion in Colony, Inc. v. Commissioner, 357 U.S. 28 (1958).

There is no dispute that the issue is one of law that may properly be disposed of by summary judgment pursuant to Rule 121, Tax Court Rules of Practice and Procedure.

Respondent does not argue that this case is distinguishable from Bakersfield, supra, but argues that Bakersfield was wrongly decided and that, in any event, the opinion of the Court of Appeals for the Fifth Circuit in Phinney v. Chambers, 392 F.2d 680 (5th Cir. 1968), is controlling here because this case is appealable to the Court of Appeals for the Fifth Circuit.

Bakersfield has now been affirmed by the Court of Appeals for the Ninth Circuit, and we decline to reconsider our conclusion in that case. Moreover, the same result has been reached in factual circumstances more similar to those in this

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case than in Bakersfield. Salman Ranch LTD v. United States, No. 2008-5053, \_\_\_ F.3d \_\_\_ (Fed. Cir. July 30, 2009), revg. and remanding 79 Fed. Cl. 189 (2007).

We conclude that Phinney v. Chambers, supra, is not squarely in point with respect to the issue dividing the parties in this case, i.e., whether an overstatement of basis claimed on a return is an "omission" for purposes of section 6501(e). See Golsen v. Commissioner, 54 T.C. 742 (1970). Contrary to respondent's position, nothing in Phinney indicates that the Supreme Court opinion in Colony, Inc., supra, was limited to sales of goods or services or was rendered obsolete in its reasoning by the language of section 6501 that was not in effect for the year before the Supreme Court. The Court of Appeals in Phinney focused on the term "omission" rather than on the term "gross income", as we did in Bakersfield.

Much has now been written on the issue, and we see no reason to repeat or elaborate by a formal opinion in this case. Accordingly, it is

ORDERED that petitioner's motion for summary judgment filed July 7, 2008, as supplemented April 1, 2009, is granted. It is further

ORDERED AND DECIDED that the adjustments set forth in the notice that is the basis of this case are barred by the 3-year period of limitations pursuant to Internal Revenue Code section 6501(a).

(Signed) Michael B. Thornton  
Judge

ENTERED: **AUG 12 2009**