

UNITED STATES TAX COURT
WASHINGTON, DC 20217

PA

JT USA, LP, JTR-LLC, TAX MATTERS)
PARTNER,)
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Petitioner(s),)
)
v.) Docket No. 5282-05.
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COMMISSIONER OF INTERNAL REVENUE,)
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Respondent)
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ORDER

The opinion in this convoluted case came out years ago, *JT USA LP v. Commissioner*, 131 T.C. 59 (2008), but the case remains alive after two appeals to the Ninth Circuit and unsuccessful request for *certiorari*. We'll assume the parties are all familiar with the meaning of TEFRA-related terms and the procedural morass the IRS caused here with its failure to provide required notifications. In the most recent burst of litigation, the Ninth Circuit remanded the case to us "for further proceedings consistent with this opinion, and to determine the validity of the adjustments in the 'final partnership administrative adjustment,' known as the FPAA." *JT USA, LP v. Commissioner*, 771 F.3d 654, 658 (9th Cir. 2014). We asked the parties earlier this year to either submit settlement documents or make some suggestions on how to proceed to a final decision on those adjustments.

Petitioner's response was a pair of motions filed on May 15, 2017. In them it seeks orders dismissing the case for lack of jurisdiction as to the Gregorys both as indirect partners and as direct partners. It focuses on the Ninth Circuit's statement that "unless a partner elects to have *all* of his or her partnership items treated as nonpartnership items, the partner cannot elect out of the TEFRA proceeding." *JT USA, LP*, 771 F.3d at 656. The first part of the petitioner's theory is that the Gregorys as direct partners in JT USA had no interest in the outcome because it was stipulated in the decision appealed that the Gregorys were no longer direct partners in JT USA at the time of the events leading to the FPAA and thus have no interest in the case. The petitioner then argues that the Gregorys' election out as indirect partners was valid and must therefore have applied to all of their partnership items in this proceeding given the terms of this stipulation.

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This is a category error: There are no elections as indirect partners distinct from elections as direct partners.

Our job at the trial level is to implement the Ninth Circuit's opinion, and it is clear in that opinion that the same taxpayers cannot make different elections under TEFRA's opt-out procedures. That is just what the Gregorys had done so long ago. *See JT USA LP*, 131 T.C. at 64.

There is no way to read to the Ninth Circuit's opinion to hold other than that this attempted bifurcation of elections was invalid. The Ninth Circuit majority reasoned that the attempted bifurcated elections -- electing into TEFRA as direct partners and electing out of TEFRA as indirect partners -- was a "slight-of-hand", *JT USA, LP*, 771 F.3d at 657, and thus without effect. That means that the Gregorys' election out as indirect partners was invalid.

The conclusion that follows is that the Gregorys' attempted election out of TEFRA as indirect partners fails. They are still "in" this case. It is therefore

ORDERED that petitioner's May 15, 2017 motion to dismiss for lack of jurisdiction as to John R. Gregory and Rita Gregory as direct partners is denied. It is also

ORDERED that petitioner's May 15, 2017 motion to dismiss for lack of jurisdiction as to John R. Gregory and Rita Gregory as indirect partners is denied. It is also

ORDERED that on or before July 31, 2017 the parties submit settlement documents or file a status report stating their views on how this case can be closed.

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

Dated: Washington, D.C.
June 30, 2017