UNITED STATES TAX COURT
WASHINGTON, DC 20217

DAVID B. GREENBERG, ET AL.,	)	
	)	
Petitioner(s),	)	
	)	
v.	)	Docket No. 1143-05,
	)	1145-05,
COMMISSIONER OF INTERNAL REVENUE,	)	1335-06,
	)	1504-06,
Respondent	)	20673-09,
	)	20674-09,
	)	20675-09,
	)	20676-09
	)	20677-09,
	)	20678-09.

O R D E R

The lowest numbered of this group of cases was on the Miami calendar back in 2007. The Court has already released its opinion and the cases are in the computation stage. On August 29, 2019, however, petitioners filed motions to dismiss for lack of jurisdiction. They identify in these motions numerous items that would normally be partnership items[1] had the IRS not sent notices to the partners that the IRS was going to convert those items because of petitioners' then-ongoing criminal investigations. *See* I.R.C. § 6231(c)(1)(B); *Greenberg v. Commissioner*, 115 T.C.M. 1403, 1410 (2018).

[1] Before its repeal, *see* Bipartisan Budget Act of 2015, Pub. L. No. 114-74, § 1101(a), 129 Stat. 584, 625, part of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub. L. No. 97-248, §§ 401–407, 96 Stat. 324, 648–71, governed the tax treatment and audit procedures for many partnerships. TEFRA partnerships are subject to special tax and audit rules. *See* I.R.C. §§ 6221–6234. TEFRA requires the uniform treatment of all "partnership item[s]"--a term defined by section 6231(a)(3) -- and its general goal is to have a single point of adjustment for the IRS rather than having it make separate partnership-item adjustments on each partner's individual return. *See* H.R. Rep. No. 97-760, at 599–601 (1982) (Conf. Rep.), 1982-2 C.B. 600, 662–63. If the IRS decides to adjust any partnership items on a partnership return, it must notify the individual partners of the adjustment by issuing an FPAA. I.R.C. § 6223(a).

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In several instances, petitioners identify the items and assert that we lack jurisdiction over them "because respondent asserted [the item] as a converted item when it is actually a nonpartnership item." That's confusing -- converted items *are* nonpartnership items, and nonpartnership items are resolved through deficiency cases, not TEFRA cases. *See* I.R.C. §§ 6231(c)(2) (converted items treated as nonpartnership items); 6226(f) (TEFRA cases limited to determination of partnership items).

Petitioners also identify several instances of adjustments of what it calls "a partnership item for which no FPAA was issued." Petitioners argue that these stem from an alleged abandonment by one partnership, GG Capital, of its ownership in another partnership, DBI. For the reasons we stated in the opinion, however, we found that there was no proof of such abandonment and that GG Capital wasn't a TEFRA partnership. It was the losses that we had to determine, not the abandonment, and that means we had deficiency jurisdiction to do so.

Petitioners' third argument for lack of jurisdiction is based on what he calls adjustments where "respondent concedes none of the adjustments were validly asserted." This is not an argument about jurisdiction, but rather an argument about the size of the adjustment or (more precisely) whether an adjustment is needed. The Court (and apparently the Commissioner) recognize that there would be duplication in a cluster of cases where some began with regular notices of deficiency and some began with converted items notices of deficiency. But that's not a concession about the Court's jurisdiction.

The Court again urges the parties to work on eliminating any duplicated disallowances. It is, however,

ORDERED that petitioners' motions to dismiss for lack of jurisdiction are denied.

(Signed) Mark V. Holmes
Judge

Dated: Washington, D.C.
September 27, 2019