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DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

CC-2002-03
Feb 19, 2002
Attachment 1

AOD-143677-01
CC:PA:APJP:2 ICPlucinski

ACTION ON DECISION

SUBJECT: Ridge and Marjory Harlan v. Commissioner,
116 T.C. 31 (2001)
T.C. Dkt. Nos. 21214-92; 24609-92

Issue: Whether, in determining the applicability of the 6-year period of limitations provided by section 6501(e)(1)(A), second-tier partnership information returns are taken into account in computing the amount of gross income stated in the return.

Discussion: The taxpayers invested in several partnerships, some of which, in turn, were partners in other partnerships. The Service determined that the taxpayers received income for 1985 as a result of a stock conversion and determined deficiencies against them. In determining the amount of gross income stated in the taxpayer's return, the Service considered the taxpayer's returns and the first-tier partnerships' information returns. The taxpayers argued that the Service should have also considered the second-tier partnership information returns. The Tax Court agreed with the taxpayer.

Section 6501(e)(1)(A) provides that, if a taxpayer omits from gross income more than 25 percent of the gross income stated on his return, the statute of limitations on assessment is 6 years rather than the 3 years provided in section 6501(a). The Service argued that amounts disclosed in the return or in a statement attached to the return shall not be taken into consideration when determining the amount omitted from gross income provided that the disclosure is adequate to appraise the Service of the nature and amount of such item. I.R.C. § 6501(e)(1)(A)(ii). Moreover, when the taxpayer's return discloses taxable income or loss from a partnership or an S corporation, the information returns of these pass-through entities are treated as adjuncts to, and part of, the taxpayer's tax return. See, e.g., Davenport v. Commissioner, 48 T.C. 921 (1967); Roschuni v. Commissioner, 44 T.C. 80 (1965). See also I.R.C. § 702(c); Treas. Reg. § 1.702-1(c)(2); Rev. Rul 55-415, 1955-1 C.B. 412.

Applying this principle to the second-tier partnership's information return, the Tax Court held that when a first-tier partnership return discloses net income or loss from the second-tier partnership, the second-tier partnership's information return becomes an adjunct to, and part of, the first-tier partnership's return. Accordingly, the Tax Court

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held that, in determining the “amount of gross income stated in the return” for purposes of section 6501(e)(1)(A), the Service must consider amounts adequately disclosed in both the first and second-tier partnerships’ information returns. We agree with this conclusion.

Recommendation: Acquiescence

Reviewers: MLG
CPN

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