

[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-13001

Agency No. 001143-05

1143-05

DAVID B. GREENBERG,

Petitioner - Appellant,

versus

COMMISSIONER OF INTERNAL REVENUE,

Respondent - Appellee,

1335-06

DAVID B. GREENBERG,

Petitioner - Appellant,

versus

COMMISSIONER OF INTERNAL REVENUE,

Respondent - Appellee,

20676-09

DAVID B. GREENBERG,

Petitioner - Appellant,

versus

COMMISSIONER OF INTERNAL REVENUE,

Respondent - Appellee,

20677-09

DAVID B. GREENBERG,

Petitioner - Appellant,

versus

COMMISSIONER OF INTERNAL REVENUE,

Respondent - Appellee,

20678-09

DAVID B. GREENBERG,

Petitioner - Appellant,

versus

COMMISSIONER OF INTERNAL REVENUE,

Respondent - Appellee.

Petition for Review of a Decision of the
U.S. Tax Court

(August 20, 2021)

Before NEWSOM, BRANCH, and LAGOA, Circuit Judges.

LAGOA, Circuit Judge:

This appeal primarily concerns the interpretation of provisions of the Tax Equity and Fiscal Responsibility Act of 1982 (“TEFRA”), Pub. L. No. 97-248, 96 Stat. 324, in effect during the tax years at issue.¹ David Greenberg appeals the Tax Court’s memorandum opinion upholding adjustments contained in five notices of deficiencies (“NODs”) issued by the Internal Revenue Service against him for the tax years 1999, 2000, and 2001, as well as the Tax Court’s adoption of the Commissioner of Internal Revenue’s computations under Tax Court Rule 155 and its denial of several of Greenberg’s posttrial motions. After careful review and with the benefit of oral argument, we affirm the Tax Court’s decision.

I. RELEVANT BACKGROUND

This case concerns the appeal of five cases filed by Greenberg that were consolidated by the Tax Court in Tax Court Docket Nos. 1143-05, 1335-06, 20676-

¹ The TEFRA partnership procedures relevant to this case were prospectively repealed by the Bipartisan Budget Act of 2015, Pub. L. No. 114-74, § 1101(a), 129 Stat. 584, 625, effective for taxable years beginning on or after January 1, 2018. *See Highpoint Tower Tech., Inc. v. Comm’r*, 931 F.3d 1050, 1052 n.2 (11th Cir. 2019).

09, 20677-09, and 20678-09.² At issue in this case is a type of tax shelter known as “Son-of-BOSS.”³ As this Court has noted:

There are a number of different types of Son-of-BOSS transactions, but what they all have in common is the transfer of assets encumbered by significant liabilities to a partnership, with the goal of increasing basis in that partnership. The liabilities are usually obligations to buy securities, and typically are not completely fixed at the time of transfer. This may let the partnership treat the liabilities as uncertain, which may let the partnership ignore them in computing basis. If so, the result is that the partners will have a basis in the partnership so great as to provide for large—but not out-of-pocket—losses on their individual tax returns. Enormous losses are attractive to a select group of taxpayers—those with enormous gains.

Highpoint Tower Tech. Inc. v. Comm’r, 931 F.3d 1050, 1052–53 (11th Cir. 2019) (quoting *Kligfield Holdings v. Comm’r*, 128 T.C. 192, 194 (2007)).

Specifically, the type of Son-of-BOSS transactions involved in the instant case is the Short Option Strategy (“SOS”) transaction. The Tax Court below aptly explained SOS transactions as follows:

The SOS transaction required clients to (1) buy from a bank a foreign-currency option that involved both a long and a short position; (2) transfer the long position to a partnership, which also assumed the

² The Tax Court also consolidated five cases filed by William Goddard and five cases filed by his former wife, Michelle Goddard, relating to the transactions at issue in this appeal. The Tax Court’s opinion addressed the five cases as to William Goddard, which he initially appealed to this Court. However, on October 8, 2020, we granted the Commissioner’s motion to transfer William Goddard’s appeal to the Ninth Circuit. As to Michelle Goddard, the Tax Court has yet to rule on her pending cases, as she is seeking innocent-spouse relief under I.R.C. § 6015 pending the outcome of William Goddard’s case. Thus, this appeal only concerns the five consolidated cases as to Greenberg.

³ “BOSS” is an acronym for “bond and options sales strategy.” *Kligfield Holdings v. Comm’r*, 128 T.C. 192, 194 (2007).

client's obligation under the short position; and then (3) withdraw from the partnership and receive a liquidating distribution of foreign currency, which the client would sell at a loss.

Greenberg v. Comm'r, T.C. Memo. 2018-74, at *8 (footnote omitted).

Before delving into this case's factual and procedural background, we first explain the statutory framework governing the taxation of partnerships during the relevant time period, given the complexity of the tax transactions before us.

A. Statutory Overview

“A partnership does not pay federal income taxes; instead, its taxable income and losses pass through to the partners.” *United States v. Woods*, 571 U.S. 31, 38 (2013); accord I.R.C. § 701. A partnership must report its tax items for the taxable year on an information return (generally, a Form 1065) and must issue to each partner such information showing that partner's distributive share of the partnership's tax items (generally, a Schedule K-1). See I.R.C. § 6031. In turn, the individual partners must report their distributive shares of the partnership's tax items on their own respective income tax returns. See *id.* §§ 702, 704, 6222(a); *Woods*, 571 U.S. at 38.

As noted above, during the taxable years at issue in this case, partnership audits and litigation were governed by provisions of TEFRA, which were formerly

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