Proskauer

Tax Court Rejects Due Process Challenge to BBA Audit Regime in Jones Bluff

Tax Talks on **April 14, 2026**

On March 19, 2026, in *Jones Bluff, LLC v. Commissioner*, 166 T.C. No. 6 (2026), the Tax Court held that a partnership could not assert due process claims to invalidate an IRS adjustment on behalf of its partners under the Bipartisan Budget Act of 2015 (the "BBA") regime. The decision does not rule on whether any particular aspect of the BBA is consistent with the Due Process Clause of the U.S. Constitution, but it does provide guidance on how due process claims would be received in the future – in particular, how a proceeding under the BBA procedures likely will not be an avenue for bringing a due process claim.

Background

Under the prior Tax Equity and Fiscal Responsibility Act ("TEFRA") regime, partnership items were determined at the partnership level, but tax was generally assessed and collected at the partner level; in addition, certain partners had rights to notice and participation in administrative and judicial proceedings as parties to those proceedings.[1] In 2015, the BBA replaced TEFRA.[2] By contrast, the BBA centralizes audit, adjustment, and collection at the partnership level and vests exclusive authority in the partnership representative, whose actions bind all partners.[3] Individual partners are not entitled to participate directly in partnership-level proceedings and generally cannot initiate litigation with respect to partnership adjustments.[4] Under many circumstances, the partnership representative may elect to "push out" the final tax liabilities from a BBA audit so that they become the direct obligations of the partners rather than the partnership.[5]

The Case

This case arose after a limited liability company that is treated as a partnership[6] for tax purposes claimed a charitable contribution deduction for a conservation easement under section 170.[7] The IRS issued a Notice of Final Partnership Adjustment ("FPA"), disallowing the deduction and asserting tax and penalties on the partnership.[8] The partnership argued that the BBA audit regime violates the individual partners' due process rights under the Fifth Amendment because it does not provide them with notice or an opportunity to be heard before they are economically affected by partnership-level determinations.[9]

The Tax Court disagreed. Although the Tax Court found that the partnership could, in theory, raise a due process claim on its own behalf, it found that the partnership lacked standing to raise the rights of its *partners*. The Tax Court reasoned that third-party standing was generally disfavored, and the fact that the partners may be able to raise their own constitutional claims in subsequent refund or collection proceedings was enough to deny third-party standing here.[10]

The Tax Court also concluded that the claims were not ripe under Article III of the U.S. Constitution.[11] Any alleged injury to the partners was contingent on future events, including whether the partnership ultimately elects to push out or otherwise pass through the liability to its partners. The Tax Court reasoned that because those events had not yet occurred, the constitutional challenge was premature.[12]

Practical Implications

The most direct consequence of *Jones Bluff* is that partner-specific due process challenges to partnership BBA proceedings will be very difficult to bring. *Jones Bluff* concludes that these challenges simply cannot be brought in the partnership-level BBA proceeding. Although the Tax Court did suggest some alternative processes for partners (such as partner-level refund actions, or bringing claims during collection proceedings), it pointedly did *not* say that these processes would actually be available; the Tax Court only stated that these processes "may" or "might" be available to partners to bring due process claims. This limited language does not provide much certainty to any partner who may want to bring a due process challenge. Additionally, the concurrence (representing three judges on the Tax Court) suggests that there would be no viable due process claim at all, as it references and relies upon prior case law affirming the validity of the TEFRA process even as to non-notice partners (and considers these authorities relevant in interpreting the BBA).[13]

---

[1] IRC § 6223.

[2] *See generally* BBA § 1101, 129 Stat. at 625.

[3] IRC § 6223(a).

[4] The Tax Court had previously ruled in *Blonien v. Commissioner*, 118 T.C. 541 (2002) that the TEFRA provisions limiting the notice and participation rights of individual partners "normally satisfy the requirements of due process because the tax matters partner, who receives notice and has the right to petition the Tax Court to reconsider the FPAA, acts as the agent for the other partners."

[5] *See* IRC § 6226(a).

[6] The limited liability company and its members are hereinafter referred to as "the partnership" and "the partners."

[7] References to section are to the Internal Revenue Code.

[8] *Jones Bluff, LLC v. Commissioner*, 166 T.C. No. 6 (2026).

[9] *Id.* at 2.

[10] *Id*. at 6.

[11] *Id.* at 7.

[12] *Id.* at 6.

[13] *Id.* at 8.

Related Professionals

- **Amanda H. Nussbaum**
  Partner
- **David S. Miller**
  Partner
- **Richard M. Corn**
  Partner
- **Malcolm S. Hochenberg**
  Partner
- **Martin T. Hamilton**
  Partner
- **Jacqueline Watson**
  Associate