

***Devonian Program v. C.I.R.***  
**No. 10–4062.; 2011 WL 3417103; (C. A. 3, 2011.)**

(September 26, 2011)

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Decided: August 5, 2011

The IRS issued a Final Partnership Administrative Adjustment (FPAA) asserting adjustments to the 1999 partnership tax return of Devonian Program ("Devonian"), an oil and gas company. Basin Gas Corporation ("Basin") and Carl Valeri, sole officer, director and shareholder of Basin, both filed separate readjustment petitions with the Tax Court. The IRS Commissioner filed a motion to dismiss Valeri's petition for lack of jurisdiction, claiming that "I.R.C. s 6226(b)(1) permits Valeri to challenge an FPAA only if Basin has not already done so." The Tax Court agreed with the Commissioner and held that Basin was Devonian's general partner and qualified as TMP. Valeri's petition for lack of jurisdiction was dismissed.

On appeal, Valeri challenged the Tax Court's finding and argued that Basin could not be Devonian's TMP because the relationship was one of agency, not partnership. When considering what entities fall within the IRS' broad definition of "partnership," the Court stated that it must consider "the agreement, the conduct of the parties, their statements, the testimony of disinterested persons, the relationship of the parties, their respective abilities and capital

contributions, the actual control of income and the purposes for which it is used, and any other facts throwing light on their true intent.” *Comm’r v. Culbertston*, 337 U.S. 733, 742 (1949).

When reviewing these factors the court noted that Basin had acquired a 17% interest in Devonian and that on Basin's 1999 tax return this was treated as an investment. Additionally, Devonian's 1999 tax return and other forms filed by Valeri with the IRS identified Basin as Devonian's TMP. The court determined that there was "more than enough evidence" to support the Tax Court's finding that the relationship between Basin and Devonian was one of partnership and that Basin was Devonian's TMP.



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