



# TaxNewsFlash

## United States

No. 2018-200  
May 22, 2018

### **D.C. Circuit: Partnership of single-member LLCs, not eligible for “small partnership” exception**

The U.S. Court of Appeals for the District of Columbia Circuit today affirmed the U.S. Tax Court’s decision that a partnership comprising of single-member LLCs did not qualify for the “small partnership” exception from the then-applicable TEFRA partnership audit proceedings.

The case is: *Mellow Partners v. Commissioner*, No. 16-1454 (D.C. Cir. May 22, 2018). Read the D.C. Circuit’s [opinion](#) [PDF 398 KB]

#### **Summary**

The partnership claimed that the single-member LLCs’ individual owners—rather than the LLCs themselves—were the partners for TEFRA purposes and, thus, that the partnership constituted a “small partnership” under section 6231(a)(1)(B). The Tax Court rejected this contention, and the D.C. Circuit today affirmed.

The D.C. Circuit agreed with the Court of Appeals in *Seaview Trading LLC v. Commissioner*, 858 F.3d 1281(9<sup>th</sup> Cir. 2017) in concluding that the partnership was subject to the TEFRA partnership proceedings because the partners were the single-member LLCs—and not their individual owners. The D.C. Circuit also deferred to the “...IRS’s reasonable interpretation [Rev. Rul. 2004-88] of its own regulation that a partnership with pass-thru partners is ineligible for the small-partnership exception and that single-member LLCs constitute pass-thru partners.”

The appeals court held that it lacked jurisdiction over the partnership’s challenge to accuracy-related penalties because this claim was not raised in the lower court proceedings.

The information contained in TaxNewsFlash is not intended to be “written advice concerning one or more Federal tax matters” subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230, as the content of this document is issued

for general informational purposes only, is intended to enhance the reader's knowledge on the matters addressed therein, and is not intended to be applied to any specific reader's particular set of facts. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

KPMG International is a Swiss cooperative that serves as a coordinating entity for a network of independent member firms. KPMG International provides no audit or other client services. Such services are provided solely by member firms in their respective geographic areas. KPMG International and its member firms are legally distinct and separate entities. They are not and nothing contained herein shall be construed to place these entities in the relationship of parents, subsidiaries, agents, partners, or joint venturers. No member firm has any authority (actual, apparent, implied or otherwise) to obligate or bind KPMG International or any member firm in any manner whatsoever.

Direct comments, including requests for subscriptions, to [Washington National Tax](#). For more information, contact KPMG's Federal Tax Legislative and Regulatory Services Group at + 1 202.533.4366, 1801 K Street NW, Washington, DC 20006-1301.

To unsubscribe from TaxNewsFlash-United States, reply to [Washington National Tax](#).

[Privacy](#) | [Legal](#)