1 T.C. 891 (1943)

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A corporation undergoing reorganization under Section 77B of the National Bankruptcy Act, but continuing to operate its business, is still considered to be ‘carrying on or doing business’ and remains subject to federal taxes; furthermore, the initially declared value of capital stock is binding for tax purposes unless timely amended.

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Summary

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H.W. Clark Company, while undergoing reorganization under Section 77B of the National Bankruptcy Act, disputed its liability for excess profits taxes. The Tax Court ruled that because the company continued operating its business under court supervision, it was still ‘carrying on or doing business’ and therefore subject to the tax. The court also held that the company was bound by the value of its capital stock as declared in its original, unamended capital stock tax return, even if that value was erroneous.

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Facts

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H.W. Clark Company, an Illinois corporation manufacturing waterworks appliances, filed for reorganization under Section 77B of the National Bankruptcy Act in 1935. The bankruptcy court allowed the company to continue operating its business under the management of its existing officers and directors, subject to court supervision. The company continued to fulfill contracts, accept new orders, hold corporate meetings, and maintain its corporate charter. The reorganization continued until September 1940. The company filed capital stock tax returns, later claiming exemption due to the reorganization. It then filed another return declaring a significantly lower value.

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Procedural History

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The Commissioner of Internal Revenue assessed deficiencies in the company's excess profits tax for 1938 and 1939. The company petitioned the Tax Court for a redetermination, arguing it was not liable for excess profits taxes during reorganization and that the Commissioner incorrectly used the original capital stock valuation. The Tax Court ruled in favor of the Commissioner.

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Issue(s)

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1. Whether a corporation in reorganization under Section 77B of the National Bankruptcy Act, which continues to operate its business under court supervision, is 'carrying on or doing business' within the meaning of Section 601 of the Revenue Act of 1938 and therefore subject to excess profits taxes.r
2. Whether the Commissioner was correct in using the capital stock value declared in the company's original capital stock tax return to compute excess profits taxes, despite the company's claim for exemption and a later amended return with a different valuation.

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Holding

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1. Yes, because the company continued to operate its business as a principal, subject to the restrictions imposed by the bankruptcy court, it was still 'carrying on or doing business'.r
2. Yes, because the initially declared value is binding for tax calculation purposes, unless a timely amendment is made, as stipulated under Section 601(f)(2) of the Revenue Act of 1938.

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Court's Reasoning

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The court distinguished this case from those involving court-appointed receivers or trustees, where the corporation's officers are effectively replaced. Here, the

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company’s existing management continued to operate the business, albeit under court supervision. The court relied on *United States Shipyards, Inc. v. Hoey*, which held that a debtor-in-possession is still ‘carrying on or doing business.’ The court emphasized that the company continued to accept orders, fulfill contracts, and maintain its corporate charter. Regarding the capital stock valuation, the court cited Section 601(f)(2) of the Revenue Act of 1938, which states that the declared value

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