1 T.C. 1110 (1943)

A corporation is not entitled to an undistributed profits tax credit under Section 26(f) of the Revenue Act of 1936, as amended, merely because it has a deficit in lieu of accumulated earnings and profits at the beginning of the taxable year.

Summary

Bolivian International Mining Corporation (BIMC) sought an undistributed profits tax credit for 1936 and 1937, arguing that its deficit in earnings and profits at the start of 1936 entitled it to a "deficit credit" under Section 26(f) of the Revenue Act of 1936. The Tax Court denied the credit, holding that the statute's language focuses on positive earnings and profits, not deficits. The court reasoned that the amendment aimed to address situations where capital losses weren't fully accounted for, and BIMC wasn't restricted from distributing its current earnings.

Facts

Boltin, Inc., owned all of BIMC's stock. In 1935, Boltin, Inc., was indebted to its shareholders. Discussions arose among shareholders regarding merging Boltin, Inc., into BIMC. An agreement of merger was executed in December 1935. In 1936, BIMC's directors resolved to pay a dividend of 12 cents per share. For 1936, BIMC had a deficit in earnings and profits of $55,305.77 on January 1st. Its adjusted net income for 1936 was $75,946.41, and its earnings and profits as adjusted in the deficiency notice were $87,984.01.

Procedural History

The Commissioner of Internal Revenue determined deficiencies in BIMC's income and undistributed profits tax for 1936 and 1937. BIMC contested the disallowance of credits claimed under Section 26(c) of the Revenue Act of 1936 and also claimed the credit under Section 26(f) of that act, as amended by the Revenue Act of 1942. The Tax Court ruled against BIMC.

Issue(s)

1. Whether BIMC is entitled to a credit under Section 26(c)(1) of the Revenue Act of 1936, based on a written contract restricting the payment of dividends.
2. Whether BIMC is entitled to a "deficit credit" under Section 26(f) of the Revenue Act of 1936, as amended, due to its deficit in earnings and profits at the beginning of the 1936 tax year.

Holding

1. No, because BIMC did not execute a written contract before May 1, 1936, that expressly restricted the payment of dividends.
2. No, because Section 26(f) applies only to corporations with accumulated earnings

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and profits, not those with deficits.

Court’s Reasoning

Regarding the Section 26(c)(1) credit, the court found no written agreement executed by BIMC before May 1, 1936, that expressly restricted dividend payments. Correspondence between individuals and the merger agreement itself were insufficient because they didn’t constitute an express written contractual obligation of the *corporation*. As to the Section 26(f)

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