***Hancock-Fortin-Rupert Co. v. Commissioner of Internal Revenue*, 11 T.C. 97 (1948)**

For the purpose of dividends paid credit under the Revenue Act of 1938, a corporation's adoption of a pre-incorporation debt obligation, evidenced by a mortgage, constitutes the debt being 'issued' by the corporation as of the date of adoption.

Summary

Hancock-Fortin-Rupert Co. sought a dividends paid credit for payments made in 1938 on a mortgage. This mortgage was initially executed by promoters before the corporation existed and was assumed by the corporation after its formation. The Commissioner argued the mortgage wasn't 'issued by the corporation' as required for the credit. The Tax Court held that the corporation's adoption of the pre-incorporation mortgage effectively constituted the 'issuance' of the mortgage by the corporation, thus entitling it to the dividends paid credit. The court reasoned that corporate adoption legally binds the corporation to pre-incorporation contracts as if they were originally made by the corporation.

Facts

Prior to the petitioner corporation's formation, promoters (Hancock, Fortin, and Stock) purchased oil leases from Sinclair-Wyoming, with financing secured by a mortgage on the leases. Henry J. Coleman acted on behalf of these promoters. The agreement and mortgage were dated February 12, 1937. The petitioner corporation was formed in April 1937. After incorporation, the corporation adopted the agreement and assumed the mortgage obligation. In 1938, the corporation paid $95,000 on this mortgage debt and sought a dividends paid credit under the Revenue Act of 1938. The Commissioner denied the credit, arguing the mortgage was not 'issued by the corporation' before December 31, 1937, as required by the statute.

Procedural History

The Commissioner of Internal Revenue determined a deficiency, denying the dividends paid credit. The taxpayer, Hancock-Fortin-Rupert Co., petitioned the Tax Court for review of the Commissioner's determination.

Issue(s)

1. Whether, for the purposes of section 27(a)(4) of the Revenue Act of 1938, a mortgage assumed by a corporation, which was originally executed by its promoters prior to incorporation, constitutes a mortgage 'issued by the corporation'.

Holding

1. Yes. The Tax Court held that when a corporation adopts a pre-incorporation contract and mortgage, it is legally considered to have ‘issued’ the mortgage as of the date of adoption, because adoption binds the corporation as if it had originally executed the documents.

Court’s Reasoning

The court reasoned that upon adopting the February 12, 1937 agreement and mortgage on April 15, 1937, the petitioner corporation became fully bound by its terms as if it had originally signed them. Citing *Bankers’ Construction Co. v. American National Bank of Cheyenne*, the court affirmed that a contract made by promoters for a corporation becomes the corporation’s contract if adopted after formation. Referencing *McArthur v. Times Printing Co.*, the court clarified that ‘adoption’ in this context is legally the making of a new contract as of the adoption date. The court interpreted ‘issued’ in section 27(a)(4) in its common sense meaning, including ‘to send out officially; to deliver by authority; to publish or utter; to emit.’ The court concluded that by adopting the mortgage, the petitioner ‘issued’ it as of April 15, 1937, meeting the statutory requirement that the mortgage be ‘issued by the corporation and in existence at the close of business on December 31, 1937.’ The court distinguished *Little John Coal Co. v. Smith* and acknowledged potential conflict with *Kolor-Thru Corporation*, suggesting the latter might have been wrongly decided if inconsistent.

Practical Implications

This case clarifies that for tax purposes, particularly concerning dividends paid credits under the 1938 Revenue Act (and potentially similar provisions in other contexts), a corporation’s formal adoption of pre-incorporation debts is treated as if the corporation originated the debt itself. This is significant for corporate tax planning, especially when dealing with liabilities assumed from promoters or during corporate formation. It emphasizes that legal adoption creates a direct obligation of the corporation, effectively dating the ‘issuance’ of debt instruments to the adoption date. This ruling suggests that courts will look to the substance of corporate actions – the adoption – rather than strictly adhering to the original date of debt instruments when determining if a corporation ‘issued’ them, especially in the context of corporate formations and assumptions of liabilities. Later cases would need to consider whether this ‘adoption as issuance’ principle extends beyond the specific context of dividends paid credits and the 1938 Revenue Act.

