Grand Rapids Brass Co. v. Commissioner, 2 T.C. 1155 (1943)

A dissolved corporation, under Michigan law, retains the capacity to prosecute and defend suits in its own name within a three-year winding-up period, and its officers at the time of dissolution retain the authority to act on its behalf unless other officers are elected.

Summary

Grand Rapids Brass Company, a Michigan corporation, dissolved on June 30, 1942. The Commissioner of Internal Revenue determined a deficiency in the corporation's taxes for the years 1941 and 1942. The corporation, through its former treasurer, Herman E. Frey, filed a petition with the Tax Court. The Commissioner moved to dismiss, arguing that under Michigan law, only the directors of a dissolved corporation or the last surviving director could institute such a proceeding and that the verification of the petition was improper. The Tax Court denied the Commissioner's motion, holding that the corporation could properly file the petition in its own name and that the verification by the former treasurer was sufficient.

Facts

- Grand Rapids Brass Company was a corporation organized under Michigan law.
- The corporation dissolved on June 30, 1942.
- The Commissioner determined a deficiency in the corporation's income tax, declared value excess-profits tax, and excess profits tax for the taxable years ended July 31, 1941, and 1942.
- Herman E. Frey, the treasurer of the corporation at the time of dissolution, verified and filed a petition with the Tax Court on behalf of the corporation.

Procedural History

- The Commissioner issued a notice of deficiency on June 23, 1943.
- The corporation filed a petition with the Tax Court on September 17, 1943.
- The Commissioner filed a motion to dismiss the proceeding for lack of jurisdiction on October 29, 1943.

Issue(s)

1. Whether a dissolved Michigan corporation can institute a proceeding before the Tax Court in its own name within the three-year winding-up period provided by Michigan law.
2. Whether the petition filed on behalf of the dissolved corporation was properly verified by the treasurer of the corporation at the time of dissolution.

Holding

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1. Yes, because under Michigan law, a dissolved corporation continues as a body corporate for three years for the purpose of prosecuting and defending suits.
2. Yes, because the treasurer at the time of dissolution retained the authority to act for the corporation in the absence of the election of other officers.

Court's Reasoning

The Tax Court relied on Michigan Compiled Laws § 450.75 (Mich. Stat. Ann. § 21.75), which provides that dissolved corporations continue to exist for three years to prosecute and defend suits. The court cited *Division Avenue Realty Co. v. McGough* and *Gamalski Hardware, Inc. v. Baird*, in which the Michigan Supreme Court held that a corporation continues to exist for the purposes outlined in the statute, including prosecuting and defending suits. The court reasoned that the 1929 amendment to the statute, which the Commissioner relied upon, did not nullify the original statute or require that actions be prosecuted in the name of the directors. Regarding verification, the court referred to Rule 6 of the Tax Court's Rules of Practice, requiring verification by a person with authority to act for the corporation. Since the treasurer stated in his verification that he had such authority and was an officer at the time of dissolution, and because the corporation continued to exist for winding-up purposes, the court concluded that the petition was properly verified. The court stated: "If, as we have held, the corporation continued to be a body 'corporate for the further term of three (3) years' from its dissolution, in the absence of the election of other officers those in office at the time of dissolution continue to act for it."

Practical Implications

This case clarifies that dissolved corporations, under statutes similar to Michigan's, retain the capacity to litigate in their own name during the winding-up period. It informs legal practice by confirming that officers at the time of dissolution retain the authority to act for the corporation in litigation matters unless replaced. This decision is important for attorneys handling matters involving dissolved corporations, especially regarding tax disputes. Later cases would likely cite this case to support the proposition that a dissolved corporation can continue to litigate in its own name during the statutory winding-up period and that former officers retain authority to act on its behalf, absent specific statutory restrictions or the appointment of other representatives.

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