***1943 Tax Ct. Memo LEXIS 7 (T.C. 1943)***

For the purpose of determining whether a corporation qualifies as a personal service corporation under Section 725 of the Internal Revenue Code, stock owned by a spouse is attributed to an individual shareholder, even if the individual owns no stock directly.

**Summary**

Van Hummell v. Commissioner addresses whether a corporation qualifies as a personal service corporation under Section 725 of the Internal Revenue Code, which allows certain corporations to avoid excess profits tax. The Tax Court held that stock owned by a spouse should be attributed to the individual for purposes of meeting the 70% ownership test, even if that individual does not directly own any shares. This attribution allowed the corporation to meet the ownership threshold required to be classified as a personal service corporation, and thus avoid excess profits tax. The decision emphasizes the importance of statutory interpretation and legislative intent.

**Facts**

Henry Van Hummell owned 33.6% of a corporation's stock, his wife Iona owned 33.2%, and their daughter Virginia owned 33.2%. George Rider, Virginia's husband, served as the corporation's general manager and was actively involved in its affairs. Van Hummell and Rider were the key executives. The corporation acted as a business manager for the Federal Postal Employees Association and as an insurance agent. The Commissioner of Internal Revenue determined a deficiency in the petitioner's excess profits tax, arguing that the corporation didn't qualify as a personal service corporation because Rider did not own any stock directly.

**Procedural History**

The Commissioner determined a deficiency in the petitioner's excess profits tax. The corporation appealed to the Tax Court, arguing that it met the requirements for a personal service corporation under Section 725 of the Internal Revenue Code, including the stock ownership requirements when spousal attribution is considered.

**Issue(s)**

Whether, for the purpose of determining if a corporation qualifies as a personal service corporation under Section 725 of the Internal Revenue Code, the stock owned by an individual's spouse can be attributed to the individual, even if the individual does not directly own any shares, to meet the 70% ownership requirement?

**Holding**

Yes, because Section 725 explicitly states that "For the purposes of this subsection, an individual shall be considered as owning, at any time, the stock owned at such time by his spouse or minor child or by any guardian or trustee representing them." The court found no ambiguity in this language that would justify denying attribution simply because Rider owned no shares directly.

**Court's Reasoning**

The court emphasized the plain language of Section 725, which explicitly states that stock owned by a spouse is attributed to an individual. The court acknowledged prior cases that required actual stock ownership but noted that the new statute deliberately changed this requirement. The court also examined the legislative history but found nothing to contradict the plain meaning of the statute. It cited examples from other sections of the Internal Revenue Code (Sections 503 and 24(b)(2)) and related regulations (Regulations 103) where similar attribution rules were applied, further supporting its interpretation. The court reasoned that the positive and unambiguous language of the statute left it with no alternative but to apply it as written. The court stated, "we are not convinced the Congress ever intended that the act should be given a construction, the effect of which would be to hold that a husband and wife may be the owners of the shares of stock of a corporation and yet not be its shareholders."

**Practical Implications**

This case clarifies that for purposes of Section 725, the IRS must attribute stock ownership from a spouse to an individual, regardless of whether the individual owns shares directly. This ruling expands the scope of who can be considered a "shareholder" for personal service corporation classification. Legal practitioners need to consider spousal attribution when determining eligibility for personal service corporation status. The decision highlights the importance of precise statutory interpretation, giving weight to the explicit language of the statute over prior case law or perceived legislative intent when the statute's wording is unambiguous. It also suggests that the IRS must maintain consistency in its interpretation of similar attribution rules across different sections of the tax code.

 