4 T.C. 244 (1944)

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A taxpayer cannot retroactively elect a new declared value for capital stock tax purposes by filing delinquent capital stock tax returns, as the election must be made within the statutory filing period.

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Summary

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Venetian Shortway, Inc. filed delinquent capital stock tax returns for the years ended June 30, 1938, 1939, and 1940, attempting to elect new declarations of value for its capital stock. The Commissioner of Internal Revenue determined deficiencies in the company's declared value excess profits tax for fiscal years ended April 30, 1940, and 1941, arguing that the adjusted declared value of the capital stock should be based on the original, timely filed return. The Tax Court held that the delinquent returns were ineffective to permit new declarations of value because the statute requires that the election be made within the statutory filing period or any authorized extension thereof.

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Facts

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Venetian Shortway, Inc. filed capital stock tax returns for the years ended June 30, 1938, June 30, 1939, and June 30, 1940, on December 23, 1942, and paid the associated tax, delinquency penalty, and interest. The returns included declared values of the company's capital stock for each year. The Commissioner determined deficiencies in the declared value excess profits tax for the fiscal years ended April 30, 1940, and 1941, based on the adjusted declared value of the capital stock for the years ended June 30, 1939, and June 30, 1940, respectively. The company sought to use the values declared in the delinquent returns.

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Procedural History

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The Commissioner of Internal Revenue assessed deficiencies against Venetian Shortway, Inc. for declared value excess profits tax. The company petitioned the Tax Court for a redetermination of the deficiencies, arguing that it was entitled to elect new declarations of value for the capital stock tax years 1939 and 1940 based on its delinquent filings.

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Issue(s)

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Whether a taxpayer can elect to designate additional declaration years for capital stock tax purposes, and thereby obtain new declarations of value, by filing delinquent capital stock tax returns after the expiration of the statutory filing period.

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Holding

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No, because the statute requires that the election to designate additional declaration years must be made in a return filed before the expiration of the statutory filing period or any authorized extension thereof.

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Court’s Reasoning

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The court reasoned that the statute explicitly requires that the election to designate additional declaration years be made within the statutory filing period or any authorized extension thereof. The court distinguished *Haggar Co. v. Helvering*, 308 U.S. 389, which allowed an amended return to be considered the

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